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S. HRG. 110–138, Pt.2

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

SEPTEMBER 25, 26, OCTOBER 24, AND DECEMBER 18, 2007

Serial No. J–110–8

PART 2

Printed for the use of the Committee on the Judiciary

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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NOMINATIONS OF JOHN DANIEL TINDER, OF INDIANA, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT; AND ROBERT M. DOW, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

TUESDAY, SEPTEMBER 25, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 3:28 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin, presiding.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Good afternoon. This meeting of the Senate Judiciary Committee will come to order.

It is my pleasure to chair this hearing featuring two distinguished nominees. I am proud that one of the nominees comes from my home State of Illinois, Robert Dow of Joliet, who has been nominated to fill a seat on the U.S. District Court in the Northern District of Illinois.

In addition, nominee John Tinder, already a district court judge in Indiana, has been nominated to fill a seat on the U.S. Court of Appeals for the Seventh Circuit, which includes Illinois.

As is the custom of the committee, we will have separate panels for each of the nominees because one is a circuit court nominee, the other, district court.

Our first panel, when we start that round, will feature the circuit nominee, Judge Tinder. The second will feature our district court nominee, Robert Dow. I want to thank Judiciary Committee Pat Leahy for giving these nominees swift consideration.

Both nominees have the support of their home State Senators and have excellent reputations. I am happy to have the Senators from Indiana to introduce Judge Tinder. At this point I would like to call on my colleague and friend, Senator Lugar.

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PRESENTATION OF JOHN DANIEL TINDER, NOMINEE TO BE CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT BY HON. RICHARD G. LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Well, thank you very much, Mr. Chairman. It's a tremendous pleasure to be here today to introduce an outstanding Circuit Court nominee for the Seventh Circuit, Judge John Daniel Tinder.

I would, first, like to thank the presiding Chairman for having this hearing, and the Judiciary Committee, Pat Leahy, and Ranking Member Arlen Specter, for moving so quickly on this important nomination.

I am pleased that Judge Tinder is joined here today by his wife, Jan Carroll, who is an accomplished attorney in her own right as partner with Barnes & Thornburg in Indianapolis. In addition, John is joined by two of his sisters, Mary Ann Wager and Susan White.

Last year, Circuit Judge Dan Manion informed me of his decision to assume senior status after a distinguished career of public service. Given this upcoming vacancy and the need for continued strong leadership, I was pleased to join with my colleague, Evan Bayh, in commending John Tinder to President Bush.

His selection was the product of a bipartisan process and reflective of the importance of finding highly qualified Federal judges to carry forward the traditions, fair principles and collegial leadership.

As the founders observed when our Constitution was drafted, few persons "will have sufficient skill in the laws to qualify them for the station of judges" and "the number must be still smaller of those who unite the requisite integrity with the requisite knowledge."

Judge Tinder embodies the rare combination the framers envisioned. I have known John for many years. I have always been impressed with his high energy, resolute integrity, and remarkable dedication to public service.

John graduated with honors from Indiana University while earning his bachelor's degree, and later graduated from Indiana University School of Law in Bloomington. He served in a variety of critical legal roles early in his career, which helped to shape his strong litigation background and experience.

Among many legal positions, he has served as Assistant U.S. Attorney, a public defender, chief trial deputy in the County Prosecutor's office, and as a partner in private practice. Given his broad experience and great abilities, John was a natural selection to serve as U.S. Attorney for the Southern District.

After 3 years of active and distinguished service, John was then tapped again by President Reagan to serve as U.S. District Court Judge for Southern Indiana, where he has served since 1987. In 20 years on the bench, he has presided over more than 200 jury trials in this district. His decisions are well known to be clear, well-reasoned, and thorough, while applying appropriate precedents to the facts in each case. He is fully aware of the importance of appellate court decisions and their impact on the trial courts.

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Throughout John's career, his reputation for personal courtesy, fairness, decency, and integrity was equally well earned and widespread among colleagues and opposing counsel alike, and on both sides of the political aisle. The Senate has already unanimously confirmed him twice, and it is not surprising that news of his Circuit Court nomination has been well received by stakeholders in the legal community and the public. I am also pleased with John's experience and professionalism, recognized by the American Bar Association, which bestowed their highest rating of "Well Qualified" for his nomination.

I would like, again, to thank the Chairman for this opportunity for Evan and for me to present John Tinder to this committee. I believe he will demonstrate remarkable leadership and will appropriately uphold and defend our laws under the Constitution.

I thank the Chair.

Senator DURBIN. Thank you very much, Senator Lugar.

Senator Bayh?

PRESENTATION OF JOHN DANIEL TINDER, NOMINEE TO BE CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT BY HON. EVAN BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Thank you, Mr. Chairman. I would like to associate myself with the very appropriate and thoughtful comments of my friend and colleague, Senator Lugar. I won't take the time to re-cover all of that ground; I don't think, in this case, it is necessary. But I would like to make three points.

First, Dick, I'd like to thank you for your courtesy. Mr. Chairman, you should know that Senator Lugar reached out to me, sought my counsel and advice about this nomination. He did not have to, as you know, but he did. Perhaps it is the Hoosier way, trying to work things together, but I wish it was more of the Senate way as well. So, I want to thank him for that courtesy. It's always a pleasure working with Dick Lugar.

Secondly, in this case it was an easy decision, Mr. Chairman. I have known John Tinder and his wife Jan, who is with us today, for more than 20 years, professionally and socially. My wife Susan and Jan used to practice law together some time ago. I have seen John have an exemplary career, first as a prosecutor. John, I can't believe you were all of 34 years when President Reagan selected you for that position. Of course, then some people were surprised I was 33 when I was elected Governor. Maybe that is a Hoosier trait as well.

He has gone on to be an outstanding, not only individual attorney in private practice, but on the Federal bench, as Senator Lugar was saying. He is the embodiment of good judicial temperament, intellect, and even-handedness.

He has been praised from both sides of the political spectrum for his service in the Southern District of Indiana, and I am confident will receive those kinds of reviews as well on the Seventh Circuit. So, he enjoys my wholehearted support, Mr. Chairman.

Finally, just let me say that if we had more nominees like John Tinder we'd have less fighting around this place. He's a good judge. He's a good lawyer. He's thoughtful. He's nonpartisan. I hope that,

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going forward, perhaps others of a similar mold will come before us so that we can do our duty with a minimum of acrimony.

Having said all that, I give my highest endorsement and strong support to this nominee.

Senator DURBIN. Thank you very much, Senator Bayh, Senator Lugar, as well. Thank you for joining us today.

We will proceed now with asking some questions of Judge Tinder, and your kind words of support will be an official part of the record. Thank you.

While the staff is changing the name plates on the table, I am going to offer into the record a statement by the Chairman of the Senate Judiciary Committee, Senator Pat Leahy. It is customary to ask unanimous consent, but since I'm the only one here, I do give consent to put this statement into the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator DURBIN. As I mentioned earlier, Judge Tinder will be before the panel for questions, then Mr. Dow will be called. Please, if you will step forward. Raise your right hand.

[Whereupon, the witness was duly sworn.]

Senator DURBIN. Thank you.

So at this point I would like to invite you, Judge Tinder, to give any opening remarks or introduction of your family and guests.

STATEMENT OF JOHN DANIEL TINDER, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

Judge TINDER. Thank you, Mr. Chairman. I would like to express my gratitude to you, Senator Leahy, and the other members of the Judiciary Committee for the prompt attention to this nomination, and of course my deep gratitude to my home State Senators for that wonderful introduction.

My family has already been introduced. I do have a bit of a cheering gallery back there, the names of whom are too many to mention. But thank you for that opportunity.

Senator DURBIN. Thank you.

Judge Tinder, congratulations on your nomination. The court of appeals is the court of last resort for the vast majority of Americans. The U.S. Supreme Court takes about 70 cases a year, so the Circuit Courts usually have the final word on most questions.

I have a special interest in this circuit, because Illinois is in the Seventh Circuit, along with Indiana and Wisconsin, and your rulings will have a direct impact on me and the people I represent.

One of my constituents, and a colleague of yours, Chief Judge Michael McCuskey in Urbana, Illinois, called my office yesterday to praise your nomination. Chief Judge Jim Holderman in Chicago also called to say that he thought you were an excellent choice, and I respect both those men very much.

According to a recent article in the *Indianapolis Star* newspaper, the former head of the Indiana Civil Liberties Union said that he never doubted he would receive a fair hearing in your courtroom, even though there were times when he disagreed with the rulings. Senators Bayh and Lugar support your nomination, to show the bipartisan support you bring. It is refreshing to see a circuit court nominee before us that has this consensus support.

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I do have a few questions for you, and you'll be happy to know that there are only a few. But let me ask you this. I guess one of the things I recall from my practice, though it's been a few years ago, is this issue of judicial temperament. These are lifetime appointments.

It appears that in some cases, judges believe this is a license to be who they really want to be because there is no one to answer to at this point. Clearly, you have good comments from attorneys who have appeared before you, but I'd appreciate it if you'd start off by addressing this issue of judicial temperament.

Judge TINDER. Well, it's certainly critical that a judge be courteous to the lawyers, to the litigants, and to the witnesses as well. A courtroom should be a place where people are comfortable to present their cases. I keep in mind things I was raised with. When I told my mother about this nomination, she made a comment to me. She said, "Well, John, that's fine, but don't get the big head."

[Laughter.]

That's kind of the Irish way of saying—

Senator DURBIN. It also sounds like midwestern advice that we all grew up with.

Judge TINDER. Yes. Thank you. And it is a reminder to me that, whatever court I serve on, I have a duty as the person presiding in that court to be courteous, to listen, and to allow people to make their presentations. Of course, time limits have to be set and cases need to be moved along, but it's very important that the judge give a presentation that is open to those who litigate.

Senator DURBIN. Also, in addition to a judge that doesn't get too full of himself or herself, attorneys and clients in a courtroom want to feel like they have a fighting chance that the judge is going to be fair.

In the paperwork you submitted, you were asked to list all the cases in which you were reversed by the Seventh Circuit. The list indicates you were reversed in nine cases where you had ruled against a worker or employee, eight cases where you had ruled against a prison inmate, and several other cases where you ruled against a criminal defendant. It does not appear that you were overruled in any case in which you ruled in favor of a worker, criminal defendant, or prison inmate.

Does this record suggest any tendency in your rulings, in reference to workers, prison inmates, and criminal defendants?

Judge TINDER. I would hope it doesn't. Over the course of 20 years I have handled in excess of 11,000 civil cases and over 1,000 criminal cases. The reversals are few. The affirmations of many cases are not so significant. I try to look at each case on its own merits. I don't go into any case with a predisposition about how it should come out.

I think the law and the facts that are involved in that case are the controlling factors. I have a record of having represented criminal defendants as a public defender, and also in private practice, and having represented workers and individuals in lawsuits as well. I would hope that any litigant would feel that their case would get a fair day in front of me.

Senator DURBIN. You've already started a response to the second question I have, and maybe you could elaborate a little bit on it.

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I often think, what would a poor person think standing before this judge, a person who is disadvantaged, dispossessed, really doesn't have the best lawyer in town? What is it in your life experience that might give this client/defendant some hope that they would be treated fairly? What have you been through that you can reflect on when you see that person and his or her interest before you?

Judge TINDER. Well, if that person is aware of the employment history I have, they'll know that I worked on behalf of criminal defendants accused—indigent defendants accused of crimes. I've been in the jail cells talking to them, waiting for the juries. I've been in their homes investigating their cases and talking with their families, trying to explain the legal system to them.

I have worked in Boys Club mentoring young, disadvantaged gentlemen who needed some guidance. Got them through school, got them into employment. I have listened to witnesses who come from all backgrounds as a judge and tried to impose fair rulings. So I have been there and that should give them some comfort.

Senator DURBIN. Today is the 50th anniversary of the Little Rock Nine, the nine students who integrated Little Rock Central High School, thanks to the executive leadership of President Eisenhower and some extraordinary legal work by people like Thurgood Marshall, and the U.S. Army.

I think it's fair for us to reflect at this moment on the issue of race, which still haunts our country in many ways, even in the courtrooms, and to really ask your thoughts, or at least raise some questions about your thoughts, on some aspects of it.

I want to really kind of focus on one case, which I hope you can explain for the record. This is the case of *Wright* v. *Efficient Lighting Systems*. In this case, a former African-American employee brought a race discrimination suit against his employer. This employer had fired him for allegedly leaving a job site early one day. You granted summary judgment for the employer and dismissed the employee's case.

On appeal, the Seventh Circuit reversed your decision. They found that the supervisor failed to fire white employees who also left work early the same day as the black employee did.

The Seventh Circuit said, "Such disparate treatment of similarly situated white employees reinforces the suspicion that the employer's termination decision was not simply and therefore innocently irrational, but rather the product of racial discrimination. . . .Summary judgment for Efficient on Wright's discriminatory discharge claim was therefore inappropriate."

Given the evidence of a double standard in this case, the black employee fired, the white employees not fired, why did you believe the black employee wasn't entitled to a trial?

Judge TINDER. My impression at the time I reviewed the case on the summary judgment motions was that the factual support for the disparate treatment wasn't sufficient, and I was incorrect. The Seventh Circuit reversed my decision, and it was a correct reversal. On remand, the case was resolved by settlement. I made a mistake in evaluating whether the evidence was sufficient that had been submitted by counsel for the plaintiff.

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Senator DURBIN. I often ask judicial nominees at every level to reflect on the fact of justice in light of the issue of race in America. We were reminded, as late as last week in Louisiana, that it is still a very sensitive topic among African-Americans, and many others. I would like to give you a chance to speak your mind and heart about that issue now into the record.

Judge TINDER. Well, it is important that courts be available to people from all races, all backgrounds, all nationalities, and that they feel that they have an opportunity in those courts to make their case when they've been wronged. As a judge, I try to evaluate each case on its own merits. I would like to be right in each instance; in that instance you pointed out, I missed that determination.

But I hope you see, over the course of 20 years, that there weren't repeated mistakes. I would hope that I would present to any litigant a feeling that they had the opportunity that any discriminatory action that has a legal remedy would be fairly tried in my court.

Senator DURBIN. I have a question, too, about one of your affiliations. I have asked this of many nominees, so you have probably been prepped: Durbin's bound to ask you about the Federalist Society. It seems to be the secret handshake here on the way to the Federal bench for many nominees.

When I asked all sorts of different people who have been in the Federalist Society what it is, and what do you do when you close the doors, I never quite get to the bottom of it. I'm not quite sure. So I'd like to ask, you were identified as on the informal Board of Advisers of the Indianapolis Lawyers' Chapter of the Federalist Society for 7 or 8 years. What was that organization all about?

Judge TINDER. It's about as informal a board as could exist. I was called by a friend who asked me to serve on that board, along with the mayor of our city, Steve Goldsmith, and the chief justice of the Indiana Supreme Court, Randall Shepherd, and I believe Senator Lugar, on an informal advisory board. We never met. I received mailings routinely about speeches that were being held, debates, things of that nature, but I was never called to any sort of service on that board.

Over the years, I guess in the mid-1980s, I attended a Federalist function, some sort of speech or debate here in Washington. At one time I was visiting when I was with the Department of Justice, and then I attended a program in Bloomington. I've attended American Constitutional Society programs in Bloomington as well. But I do not have membership in the Federalist Society.

Senator DURBIN. You must be a busy man, but you decided to make this part of your professional life. What was it that brought you to this membership?

Judge TINDER. I never became a member. I was on that informal board that did not meet. I was requested by a friend to do it.

Senator DURBIN. It continues to be a riddle wrapped in an enigma.

[Laughter.]

Someday I'm going to get to the bottom of this.

Let me leave the remaining moments for you to make any closing remarks you'd like to make for the record about this new position that you're seeking.

Judge TINDER. Well, again, I express my appreciation for the prompt attention to it, and I hope that my record of 20 years on the court and dozen years prior to that in various forms of public service would serve me well, if the nomination is confirmed. Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   John Daniel Tinder

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Seventh Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Room 304, Birch Bayh Federal Building and United States Courthouse
   46 East Ohio Street, Indianapolis, Indiana 46204

4. **Birthplace**: State year and place of birth.

   1950; Indianapolis, Indiana

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Jan Marie Carroll
   Partner, Barnes & Thornburg LLP
   11 South Meridian Street, Indianapolis, Indiana 46204

   We have no children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Indiana University School of Law-Indianapolis, 1975, no degree

   Indiana University School of Law-Bloomington, 1972 – 1975; J. D., 1975

   Indiana University School of Business-Bloomington, 1968 – 1972; B.S., 1972

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7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

09/1987 to Present	United States District Judge Southern District of Indiana Birch Bayh Federal Building and United States Courthouse 46 East Ohio Street, Room 304 Indianapolis, Indiana 46204
05/1984 to 09/1987	United States Attorney Southern District of Indiana United States Department of Justice 10 West Market Street, Suite 2100 Indianapolis, Indiana 46204
01/1980 to 12/1988	Adjunct Professor Indiana University School of Law-Indianapolis 530 West New York Street Indianapolis, Indiana 46202
05/1982 to 05/1984	Associate Harrison and Moberly, Attorneys at Law Market Tower, Suite 700 10 West Market Street Indianapolis, Indiana 46204
08/1977 to 05/1982	Partner Tinder & Tinder, Attorneys at Law 808 First Federal Building Indianapolis, Indiana 46204
01/1979 to 01/1983	Deputy Prosecutor (Chief Trial Deputy) Marion County Prosecutor's Office 251 East Ohio Street Indianapolis, Indiana 46204
08/1977 to 12/1978	Public Defender Marion County Superior Court, Criminal Division, Room Number 3 City-County Building, Room 242 Indianapolis, Indiana 46204

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08/1975 to 09/1977	Assistant United States Attorney Southern District of Indiana United States Department of Justice 10 West Market Street Indianapolis, Indiana 46204
04/1975 to 08/1975	Associate Tinder & O'Donnell, Attorneys at Law 808 First Federal Building Indianapolis, Indiana 46204
10/1974 to 05/1975	Bail Commissioner Marion County Bail Project 908 LaRosa Building Indianapolis, Indiana 46204
05/1974 to 09/1974	Law Clerk Office of the United States Attorney Southern District of Indiana United States Department of Justice 10 West Market Street Indianapolis, Indiana 46204
05/1973 to 05/1974	Law Clerk Applegate and Pratt, Attorneys at Law 520 North Walnut Street Bloomington, Indiana 47402

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

   I have not served in the military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Hoosier Scholar and Dean's List (1968-1972)

   Business School Honors Program

   Beta Gamma Sigma (national business honorary fraternity) (1971)

   Bachelor of Science in Business awarded with honors (1972)

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Academy of Law Alumni Fellows, Indiana University School of Law-Bloomington (2007)

Fred B. McCashland Outstanding Alumnus Award, Brebeuf Jesuit Preparatory School (2005)

Volunteer of the Year, Wheeler Boys and Girls Club, Indianapolis (1988)

Upon leaving the United States Attorney's Office in 1977 and 1987 and the Marion County Prosecutor's Office in 1983, I was awarded certificates of merit and tribute plaques by those offices and the various federal, state, and local law enforcement agencies served by them.

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Federal Judges Association, 1987 to present

National Association of Former United States Attorneys, 1987 to present

Federal Bar Association, Indianapolis Chapter, 1984 to present

Seventh Circuit Bar Association, 1978 to present

Indiana State Bar Association, 1975 to 1992 and 2006 to present

Indianapolis Bar Association, 1975 to present, currently I serve as a Vice President and was a member of the Pro Bono Standing Committee from 2002 to 2004

Sagamore American Inn of Court, 2004 to present

St. Thomas More Society, Indianapolis Chapter, 1975 to present

Lawyers Club of Indianapolis, 1986-1987

American Bar Association, 1975-1994

Indiana Supreme Court Committee on Character and Fitness, 1982-1987

Indiana Supreme Court Committee on Rules of Evidence, 1992-1993

Indiana University School of Law-Bloomington Board of Visitors, 1985-1996 (Chair 1994); Dean Search Committees, 1990 and 2003

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United States Attorney General's Advisory Committee of United States Attorneys, 1985-1987 (and related committees and subcommittees) (Vice Chairman, 1986-87)

Judicial Conference of the United States Committee on Automation and Technology, 1994-1997; Committee on Court and Judicial Security 1990-1992

Administrative Office of the U.S. Courts Courtroom, Chambers and Libraries Automation Umbrella Group (Chairman) 1992-1994

Indiana Trial Lawyers Association, 1977-1982 (dates approximate)

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Indiana Supreme Court, April 29, 1975

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Indiana Supreme Court, April 29, 1975
United States Court of Appeals for the Seventh Circuit, September 1975
United States District Court, Southern District of Indiana, April 29, 1975
United States District Court, Northern District of Texas, January 1980
Supreme Court of the United States, June 26, 1978

These memberships are all continuous to the date of this response.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Beta Gamma Sigma (business honorary), 1971 to present
Beta Theta Pi Fraternity, Central Indiana Alumni Association 1975 to present
Cale J. Holder Scholarship Committee, 1990 to present
Hillcrest Country Club, 1994 to present

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Indianapolis Athletic Club, 1975-1980
Big Brothers of Indianapolis, 1978-1980
University Club of Indianapolis, 1984-1986
Boys and Girls Clubs of Indianapolis (Volunteer at Wheeler Club 1986-1992), (Board Member 1992)
Cathedral Soup Kitchen, 1984-1995
Informal board of advisors, Indianapolis Lawyers Chapter of the Federalist Society, approximately 1993 to 2000
Moose Lodge No. 17, honorary member, 1975-1987 (dates approximate)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

In 1970, I became a member of a national college fraternity, Beta Theta Pi, which restricts membership to males. I do not believe that this organization discriminated or currently discriminates on the basis of race or religion. I continue to affiliate with this organization as an alumnus and attend lunch meetings of the Central Indiana Beta Theta Pi Alumni Association. As a result of the membership restriction to undergraduate males, continued alumni affiliation by definition is limited to males. I have taken no actions to change the membership policies or practices of this organization.

In 1986 and part of 1987, I was a member of the Indianapolis Lawyers Club, which had no female members. I resigned in 1987 after my nomination of a woman (the Honorable Sarah Evans Barker, a U.S. District Judge) for membership was rejected because it appeared to me that the club had no other reason to reject her nomination other than gender. Later, that organization reformed its admission practices, and both Judge Barker, my wife (and other women) have become members of, and have served as Presidents of, the club.

In 1984, I was nominated to membership in a luncheon club called the University Club of Indianapolis. Under club practices, no application for membership was permitted. Members were chosen upon nomination of current members, and I accepted membership when notified of my selection. I subsequently inquired about membership practices and was told that no women had ever been nominated for membership but that no formal prohibition existed. After later discussing the prospect of nominating women for membership with various members and officers of the club, I became convinced of the futility of such an effort and resigned from this organization in 1986.

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13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Letter to Editor of *Indianapolis Star*, October 28, 1968

Book Review in *Indianapolis Star*, March 19, 1989

Open Letter in *Indiana Lawyer* Re: Federal Bench/Bar Automation Committee, March 9, 1994

Editorial Piece in *Indiana Lawyer* Re: Counsel for Pro Se Litigants, November 7, 2001

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

United States District Court, Southern District of Indiana Order and Procedures for Pilot Program of Cameras in Court, June 1991

Report of Central Region Committee of Indiana Supreme Court on Uniform Rules of Evidence, February 1993

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have given no such testimony or made any such official statements or other communications relating to such matters.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the

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speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

The response to this question is in two sections. The first section lists notes or outlines used for twenty-six speeches or talks, transcripts of four speeches, and newspaper accounts of two additional speeches. The second section lists the dates and locations of forty-three such presentations for which I do not have notes, outlines, transcripts, or newspaper accounts. The dates (if known) and the organizations hosting the programs are listed for both sections. I have no information about speeches made before January 1, 1996 except for those few listed below for which I retained a newspaper account, notes, or a transcript. I know that I made additional speeches and presentations as Chief Trial Deputy, United States Attorney, and District Judge prior to January 1996, which I am unable to list due to a lack of records. Generally, the topics and groups for any earlier unlisted speeches would have been similar to those listed below. At most of my presentations to bar associations or other law-related groups, school groups, and other organizations, a question-and-answer session follows the formal presentation, but I do not have any record of the questions and answers.

A number of the speech notes have been used on multiple occasions. For example, the notes used at naturalization programs, listed as item 6 below, are used three to five times per year at such programs. Similarly, the notes listed as item 11 have been used at numerous attorney-admission programs through the twenty years I have served as a judge. Because I have made multiple, repetitive use of the naturalization and lawyer induction speech notes, I have not listed the dates of each of these similar events.

Notes, newspaper accounts, or transcripts of speeches or remarks:

1. Transcript of remarks at Installation as United States Attorney for the Southern District of Indiana, August 1, 1984, Indianapolis, Indiana.
2. Notes for May 1985 presentation Indiana State Bar Association (ISBA) Criminal Law Section on federal/state grand juries.
3. February 10, 1986, speech at Evening and Breakfast Exchange Clubs of Logansport, Indiana Dinner, covered in Logansport *Pharos - Tribune* article, February 11, 1986, Logansport, Indiana.
4. August 1986 speech to Terre Haute Rotary Club—covered in *Terre Haute Tribune* article, Terre Haute, Indiana.
5. Transcript of Remarks at Induction Ceremony as U.S. District Judge, September 18, 1987, Indianapolis.
6. Two variations of notes for remarks at Naturalization Ceremonies, 1988-2007, Indianapolis.
7. Notes for speech at *Indiana Law Journal* Banquet, March 25, 1988, Bloomington, Indiana.
8. Notes for remarks to Indiana University, School of Business, business law classes, September 5, 1988.

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9. Notes for remarks at Federal Bar Association, Indianapolis Chapter, Civil Practice Update, November/December 1988.
10. Notes for presentation on public interest law at Indiana University School of Law–Bloomington, 1988 or 1989.
11. Three variations of remarks at swearing-in ceremony for newly inducted lawyers, November 1990, November 8, 1999, October 17, 2005, and approximately two to four other occasions, Indianapolis.
12. Outline of Presentation on Automation at Orientation Seminar for Newly Appointed District Judges, Federal Judicial Center, April 9, 1991, Washington, DC.
13. Notes for remarks at St. Thomas More Society annual dinner, April 15, 1991, Indianapolis.
14. Notes for remarks of introduction of the Honorable Joel M. Flaum at Federal Bar Association, Indianapolis Chapter meeting, September 24, 1992.
15. Notes for comments to the Gene Brooks Inn of Court, September 22, 1993, Evansville, Indiana.
16. Notes for panel presentation on summary judgment and handout materials at Indiana Continuing Legal Education Forum program, January 28, 1994, Indianapolis.
17. Transcript of remarks at the Memorial Ceremony for the Honorable William E. Steckler, July 21, 1995, Indianapolis.
18. Notes for remarks at Eagle Scout Induction, Troop #174, June 10, 1996, Indianapolis.
19. Notes for comments at Indiana University School of Law–Indianapolis Law Review banquet, November 19, 1999.
20. Notes for speech at Lawrence Central High School National Honor Society awards ceremony, February 22, 2000, Indianapolis.
21. Notes of remarks at Federal Bar Association, Indianapolis Chapter reception recognizing the service of the Honorable Sarah Evans Barker as Chief Judge, December 19, 2000.
22. Notes for remarks at Federal Bar Association, Indianapolis Chapter Civil Practice Update, December 6, 2001.
23. Notes for comments at reception honoring newly inducted Dean Lauren Robel at Indiana University School of Law–Bloomington, July 28, 2003.
24. Notes for eulogy at the funeral of the Honorable Gene E. Brooks, April 23, 2004, Evansville, Indiana.
25. Notes of remarks and handout materials at November 3, 2004, ICLEF program on trial issues, Indianapolis.
26. Notes for remarks on acceptance of the Fred B. McCashland Award at Brebeuf Jesuit Preparatory School, June 17, 2005, Indianapolis.
27. Notes for comments at the retirement celebration of Janet Ellis and Anne Perry, U.S. District Court, August 31, 2005, Indianapolis.
28. Notes for introduction of the Honorable Deborah J. Daniels at Antoinette Dakin Leach Award Ceremony, Indianapolis Bar Association, Women and the Law Section, October 11, 2005.

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29. Notes for remarks at Indianapolis Bar Association Bench/Bar Conference panel on civility, June 16, 2006, Louisville, Kentucky.
30. Transcript of remarks at the Memorial Ceremony for the Honorable S. Hugh Dillin, June 23, 2006, Indianapolis.
31. Notes for remarks at Indianapolis Bar Association Bar Leadership Series, August 11, 2006.
32. Notes for remarks on Induction into the Indiana University School of Law–Bloomington Academy of Law Alumni Fellows, April 13, 2007.

Speeches or remarks for which I have no notes, newspaper accounts, or transcripts:

1. Indiana Attorney General's Seminar on Mining Issues, Indianapolis, September 10, 1996.
2. Federal Civil Practice Update Seminar, Indianapolis Chapter Federal Bar Association, September 12, 1996.
3. Federal Civil Litigation Seminar, Indianapolis Chapter Federal Bar Association/Indiana Continuing Legal Education Foundation, September 10, 1997.
4. Career Day, Brebeuf Jesuit Preparatory School, February 5, 1998, Indianapolis.
5. Federal Civil Practice Update Seminar, Indianapolis Chapter Federal Bar Association, September 24, 1998.
6. Indiana Continuing Legal Education Foundation Presentation on federal litigation Defense Trial Counsel Institute/Indiana Civil Liberties Union, April 27, 1999, Indianapolis.
7. Fred McCashland Retirement Roast, Brebeuf Jesuit Preparatory School, April 27, 1999, Indianapolis.
8. Indianapolis Bar Association Program for Summer Associates, July 22, 1999.
9. Indiana Continuing Legal Education Foundation Panel on Complex Litigation, September 24, 1999.
10. Indiana University School of Law – Bloomington, Public Service and Pro Bono Responsibility, November 11, 1999.
11. Brebeuf Jesuit Preparatory School Government Classes, January 3, 2000, Indianapolis.
12. South Adams High School Students, June 29, 2000, Indianapolis.
13. Valparaiso Law Alumni Reception, federal litigation, December 5, 2001.
14. Ice Miller law firm, Indianapolis, Pro Bono representation, December 10, 2001.
15. Webelos Scout Troops, January 30, 2002, Indianapolis.
16. Indianapolis Public Schools, Third Grade Class Visit, February 19, 2002.
17. Indiana High School Mock Trial Competition, February 23, 2002.
18. Bingham McHale Litigation Department, Pro Bono representation, March 12, 2002.
19. Indianapolis Bar Association/Federal Bar Association, Speech on Revised Local Rule 56.1, December 3, 2002.

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20. Career Day, Brebeuf Jesuit Preparatory School, January 31, 2003, Indianapolis.
21. Probation Officer Dennis Duvall Retirement Dinner, February 8, 2003.
22. IRS Special Agent Marion Siara Retirement Dinner, June 6, 2003, Indianapolis.
23. Indiana State Bar Association program on federal litigation, October 23, 2003, Indianapolis.
24. Indianapolis Bar Association Bar Leadership program, November 18, 2003, Indianapolis.
25. Heartland Pro Bono/Indianapolis Bar Association Pro Bono Awards, Indiana University School of Law – Indianapolis, December 2, 2003.
26. Indianapolis Bar Association Summary Judgment Employment Law Program, December 4, 2003, Indianapolis.
27. Indiana University School of Law – Indianapolis, Program on Federal Clerkships (Panelist), February 19, 2004.
28. Indianapolis Bar Association law student networking program, Indiana University-Indianapolis Law School, March 30, 2004.
29. Indiana University School of Law-Indianapolis 2004 Pro Bono Awards, April 2, 2004.
30. Heartland/Indiana State Bar Association Pro Bono Recognition Event, October 14, 2004, Indianapolis.
31. Federal Bar Association Federal Practice Seminar, December 9, 2004, Indianapolis.
32. Indiana University School of Law-Indianapolis Pro Bono Program, April 15, 2005.
33. Indiana Continuing Legal Education Foundation program on Electronic Case Filing, April 22, 2005, Indianapolis.
34. Indiana Conference for Legal Education Opportunity student federal courts presentation, July 26, 2005, Indianapolis.
36. "Meet the Indiana Judiciary," Indiana University School of Law – Indianapolis, September 20, 2005.
37. Federal bar Association Civil Practice Update, December 8, 2005, Indianapolis.
38. Judicial Clerkship Panel, Indiana University School of Law – Indianapolis, March 28, 2006.
39. Scout Troop federal courts presentation, June 20, 2006.
40. Indianapolis Bar Association Solo Practitioner Program, September 14, 2006, Indianapolis.
41. Indiana University School of Law – Indianapolis, Internship Class on federal courts, January 12, 2007.
42. Indiana University School of Law – Indianapolis, LLM class, February 20, 2007.
43. Terre Haute Bar Association Meeting honoring Magistrate Judge Lewis, March 22, 2007.

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e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have no transcripts or recordings of any interviews given to newspapers, magazines, or radio or television entities. However, I am providing copies of news articles I have retained which include quotes from interviews given. I may have been interviewed by media organizations about particular cases or general policies on other occasions while I was Chief Trial Deputy in Marion County, Indiana, and as United States Attorney, but I do not have copies of such interviews. While contact with media organizations has been much less frequent during my years as a judge, I may have been interviewed by media organizations on occasions other than those listed below during the last twenty years, but if so, I have not retained copies of the reports of any other such interviews. I am also including verbatim interviews from two Internet blogs as other publications.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by President Reagan, with the advice and consent of the United States Senate, as a United States District Judge for the Southern District of Indiana on August 10, 1987.

15. **Citations**: If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

United States v. Morgano, 39 F.3d 1358 (7th Cir. 1994) (Tinder, J., sitting by designation), *cert. denied sub nom. Palermo v. United States*, 515 U.S. 1133 (1995)

Jones v. Phipps, 39 F.3d 158 (7th Cir. 1994) (Tinder, J., sitting by designation)

In addition, I have authored decisions as a District Court Judge. These district court decisions are maintained by West Publishing© either in printed publications (such as Federal Supplement or Federal Rules and Decisions) and/or in its Westlaw© computer-assisted legal research database along with a few decisions that LEXIS/NEXIS© maintains a similar database (LEXIS©). A list of my district court decisions will be provided as an appendix to this questionnaire.

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b. a list of cases in which certiorari has been requested or granted;

United States v. Wiley, 475 F.3d 908 (7th Cir. 1997), *cert. denied sub nom. Brown v. United States*, — S. Ct. — 2007 WL 1243349 (U.S. May 29, 2007) (No. 06-10884), *and cert. denied*, — S. Ct. —, 2007 WL 1449777 (U.S. June 11, 2007) (No. 06-11303)

United States v. Johnson, 471 F.3d 764 (7th Cir. 2006), *petition for cert. filed* (U.S. Mar. 12, 2007) (No. 06-10559)

United States v. Lynch, 203 F. App'x 718 (7th Cir. 2006), *cert. denied*, 127 S. Ct. 998 (2007)

Grigsby v. Cotton, 456 F.3d 727 (7th Cir. 2006), *cert. denied*, 127 S. Ct. 2246 (2007)

United States v. Miller, No. IP 03-180-CR-01-T/F, 2005 WL 756160 (S.D. Ind. Jan. 21, 2005), *aff'd*, 450 F.3d 270 (7th Cir.), *cert. denied*, 127 S. Ct. 842 (2006)

Stephen v. Cottey, 145 F. App'x 179 (7th Cir. Aug. 17, 2005), *cert. denied*, 126 S. Ct. 1349 (2006)

United States v. White, 368 F.3d 911 (7th Cir. 2004), *cert. granted and vacated by*, 543 U.S. 1105 (2005) (remanding to Seventh Circuit for further consideration in light of *United States v. Booker*, 543 U.S. 220 (2005))

United States v. Merritt, 361 F.3d 1005 (7th Cir. 2004), *cert. granted and judgment vacated by* 543 U.S. 1099 (2005) (remanding to Seventh Circuit for further consideration in light of *United States v. Booker*, 543 U.S. 220 (2005))

United States v. Dotson, No. 03-4352, 2004 WL 1435203 (7th Cir. June 25, 2004), *cert. granted, judgment vacated, and remanded*, 543 U.S. 1110 (2005) (remanding for further consideration in light of *United States v. Booker*, 543 U.S.220 (2005))

Kramer v. Olson, 347 F.3d 214 (7th Cir. 2003), *cert. denied*, 541 U.S. 990 (2004)

Piggie v. Cotton, 342 F.3d 660 (7th Cir. 2003), *cert. denied*, 540 U.S. 1114 (2004)

Dunne v. Olson, 67 F. App'x 939 (7th Cir.), *cert. denied*, 540 U.S. 1068 (2003)

United States v. Langford, No. IP 01-0050-CR-T/F, 2001 WL 1946535 (S.D. Ind. Nov. 05, 2001), *aff'd*, 314 F.3d 892 (7th Cir. 2002), *reh'g and reh'g en banc denied*, No. 02-1167, 2003 WL 1796010 (7th Cir. Mar. 27, 2003), *cert. denied*, 540 U.S. 1075 (2003)

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Gladney v. Pendleton Corr. Facility, 302 F.3d 773 (7th Cir. 2002), *cert. denied*, 538 U.S. 910 (2003)

United States v. Cheshier, No. 01-3321, 2002 WL 521390 (7th Cir. Apr. 4, 2002), *cert. denied*, 537 U.S. 897 (2002)

Boczar v. Kingen, No. IP 99-0141-C-T/G, 2000 WL 1137713 (S.D. Ind. Mar. 9, 2000), *aff'd*, Nos. 00-1907, 00-3259, 2001 WL 468254 (7th Cir. May 1, 2001), *cert. denied*, 534 U.S. 952 (2001)

United States v. Rodgers, 245 F.3d 961 (7th Cir. 2001), *cert. denied*, 536 U.S. 961 (2002)

Riggs v. Hanks, No. 00-2783, 2001 WL 111511 (7th Cir. Feb. 6, 2001), *cert. denied*, 534 U.S. 844 (2001)

U.S. ex rel. S & G Excavating, Inc. v. Seaboard Sur. Co., 93 F. Supp. 2d 968 (S.D. Ind. 2000), *rev'd*, 236 F.3d 883 (7th Cir.), *cert. dismissed*, 532 U.S. 1049 (2001)

Holland v. Justak, No. 00-3103, 234 F.3d 1273, 2000 WL 1716355 (7th Cir. Nov.14, 2000), *cert. denied*, 532 U.S. 983 (2001)

Webb v. Bd. of Trustees of Ball State Univ., 234 F.3d 1275 (7th Cir. 2000), *cert. denied*, 532 U.S. 942 (2001)

James v. Gen. Motors Corp., 230 F.3d 315 (7th Cir. 2000), *cert. denied*, 532 U.S. 973 (2001)

Waymire v. Norfolk & W. Ry. Co., 65 F. Supp. 2d 951 (S.D. Ind. 1999), *aff'd*, 218 F.3d 773 (7th Cir. 2000), *cert. denied*, 531 U.S. 1112 (2001)

United States v. Cardenas, 217 F.3d 491 (7th Cir.), *cert. denied*, 531 U.S. 998 (2000)

United States v. Gevedon, 214 F.3d 807 (7th Cir.), *cert. denied*, 531 U.S. 916 (2000)

P.J. v. Eagle-Union Cmty. Sch. Corp., No. 99-2079, 202 F.3d 274, 1999 WL 1054599 (7th Cir. Nov. 17, 1999), *cert. denied*, 530 U.S. 1245 (2000)

United States v. Taylor, 196 F.3d 854 (7th Cir. 1999), *cert. denied*, 529 U.S. 1081 (2000)

United States v. Asher, 178 F.3d 486 (7th Cir.), *cert. denied*, 528 U.S. 944 (1999)

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Perry v. United States, No. 98-4128, 175 F.3d 1020, 1999 WL 272406 (7th Cir. Apr. 30, 1999), *cert. denied*, 528 U.S. 932, *and reh'g denied*, 528 U.S. 1040 (1999)

United States v. Edwards, No. 98-3905, 175 F.3d 1021, 1999 WL 265181 (7th Cir. Apr. 28, 1999), *cert. denied*, 528 U.S. 907 (1999)

Morse v. Hanks, 172 F.3d 983 (7th Cir.), *cert. denied*, 528 U.S. 851 (1999)
O'Shell v. United States, No. 98-3750, 175 F.3d 1020, 1999 WL 184140 (7th Cir. Mar. 25, 1999), *reh'g denied, cert. denied*, 528 U.S. 1158 (2000)

Higgason v. Shroyer, 98-1973, 165 F.3d 32 (7th Cir. Nov 25, 1998), *cert. denied*, 526 U.S. 1055 (1999)

United States v. Spears, 159 F.3d 1081 (7th Cir. 1998), *cert. denied*, 528 U.S. 896 (1999)

Willis by Willis v. Anderson Cmty. Sch. Corp., 158 F.3d 415 (7th Cir. 1998), *as amended on denial of reh'g and reh'g en banc, cert. denied*, 526 U.S. 1019 (1999)

Todd v. Rush County Schs., 983 F. Supp. 799 (S.D. Ind. 1997), *aff'd*, 133 F.3d 984 (7th Cir.), *reh'g and reh'g en banc denied*, 139 F.3d 571 (7th Cir.), *cert. denied*, 525 U.S. 824 (1998)

Jefferson v. Bertsch, No. 96-3676, 124 F.3d 204, 1997 WL 547923 (7th Cir. Aug. 29, 1997), *cert. denied*, 522 U.S. 1147 (1998)

United States v. Chappell, No. 96-3624, 114 F.3d 1192, 1997 WL 267862 (7th Cir. May 7, 1997), *cert. denied*, 523 U.S. 1079 (1998)

United States v. House, 110 F.3d 1281 (7th Cir.), *cert. denied sub nom. Hughes v. United States*, 522 U.S. 877 (1997)

Pryner v. Tractor Supply Co., 927 F. Supp. 1140 (S.D. Ind. 1996), *aff'd*, 109 F.3d 354 (7th Cir.), *cert. denied*, 522 U.S. 912 (1997)

Taylor v. Hanks, No. 96-1056, 1997 WL 107759 (7th Cir. Mar. 5, 1997), *cert. denied*, 522 U.S. 834, *and reh'g denied*, 522 U.S. 989 (1997)

United States v. Asher, 96 F.3d 270 (7th Cir. 1996), *cert. denied*, 519 U.S. 1100 (1997)

United States v. Oakley, 944 F.2d 384 (7th Cir. 1991), *cert. denied*, 503 U.S. 949 (1992)

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United States v. Young, No. 95-2626, 79 F.3d 1150, 1996 WL 116820 (7th Cir. Mar. 14, 1996), *cert. denied*, 519 U.S. 851 (1996)

Contreras v. Hawk, Nos. 95-1810, 95-2126, 77 F.3d 484, 1996 WL 72352 (7th Cir. Feb. 14, 1996), *cert. denied*, 519 U.S. 861 (1996)

Templeton Coal Co. v. Shalala, 882 F. Supp. 799 (S.D. Ind. 1995), *aff'd sub nom.*

Davon, Inc. v. Shalala, 75 F.3d 1114 (7th Cir.), *cert. denied sub nom. Templeton Coal Co. v. Shalala*, 519 U.S. 808 (1996)

Swaim v. Moltan Co., 73 F.3d 711 (7th Cir.), *cert. denied sub nom. Gurley v. Swaim*, 517 U.S. 1244 (1996)

Tinsley v. Methodist Hosp. of Ind., Inc., No. 95-1623, 70 F.3d 1275, 1995 WL 695960 (7th Cir. Nov. 22, 1995), *cert. denied*, 517 U.S. 1146, *and reh'g denied*, 518 U.S. 1029 (1996)

United States v. Ruth, 65 F.3d 599 (7th Cir. 1995), *cert. denied*, 517 U.S. 1158 (1996), *dismissal of post-conviction relief vacated by* 266 F.3d 658 (7th Cir. 2001)

United States v. Allender, 62 F.3d 909 (7th Cir. 1995), *cert. denied*, 516 U.S.1076 (1996)

Glass v. Duckworth, No. 94-3035, 61 F.3d 905, 1995 WL 447915 (7th Cir. July 25, 1995), *cert. denied*, 516 U.S. 1057, *and reh'g denied*, 516 U.S. 1167 (1996)

United States v. Groce, No. 94-1380, 46 F.3d 1134, 1995 WL 21479 (7th Cir. Jan. 17, 1995), *cert. denied*, 514 U.S. 1133 (1995)

Burns v. Reed, 44 F.3d 524 (7th Cir.), *cert. denied*, 515 U.S. 1145 (1995)

United States v. Morgano, 39 F.3d 1358 (7th Cir. 1994), *cert. denied sub nom. Palermo v. United States*, 515 U.S. 1133 (1995)

United States v. Johnson, 32 F.3d 265 (7th Cir. 1994), *cert. denied*, 513 U.S. 1182 (1995)

Prymer v. Ogden, 29 F.3d 1208 (7th Cir.) (Tinder, J., sitting by designation, did not author opinion, *cert. denied*, 513 U.S. 1057 (1994)

United States v. Salas, No. 90-1132, 925 F.2d 1468, 1991 WL 21202 (7th Cir. Feb. 22, 1991) (affirming sentence imposed by district court), *and aff'g denial of habeas corpus and request for reconsideration*, No. 92-1362, 986 F.2d 1424, 993 WL 46824 (7th Cir. Feb. 23, 1993), *cert. denied*, 508 U.S. 945 (1993)

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Hudson v. Hedge, 27 F.3d 274 (7th Cir.), *cert. denied*, 513 U.S. 1046 (1994)

Flowers v. Ind. Univ. Sch. of Law-Indianapolis, No. 93-3752, 27 F.3d 569, 1994, WL 233648 (7th Cir. May 27, 1994), *cert. denied*, 513 U.S. 969 (1994)

Rowe v. DeBruyn, 17 F.3d 1047 (7th Cir.), *cert. denied*, 513 U.S. 999 (1994)

Chambers v. Am. Trans Air, Inc., No. IP 88-1203-C, 1991 WL 544616 (S.D. Ind. May 8, 1991), *aff'd*, 17 F.3d 998 (7th Cir.), *cert. denied*, 513 U.S. 1001 (1994)

Dunne v. Keohane, 14 F.3d 335 (7th Cir.), *cert. denied*, 511 U.S. 1149 (1994)

Henderson v. U.S. Parole Comm'n, 13 F.3d 1073 (7th Cir.), *cert. denied*, 513 U.S. 926 (1994)

Selch v. Letts, 792 F. Supp. 1502 (S.D. Ind. 1992), *aff'd*, 5 F.3d 1040 (7th Cir.1993), *cert. denied*, 510 U.S. 1164 (1994)

Anderson v. Steers, Sullivan, McNamar & Rogers, 998 F.2d 495 (7th Cir. 1993), *cert. denied*, 510 U.S. 1114 (1994)

United States v. Blackburn, 992 F.2d 666 (7th Cir.), *cert. denied*, 510 U.S. 949 (1993)

Chambers v. American Trans Air, Inc., 990 F.2d 317 (7th Cir. 1993), *cert. denied*, 513 U.S. 1001 (1994)

Laws v. White, No. 91-2572, 977 F.2d 585, 1992 WL 245940 (7th Cir. Sept. 29,1992), *cert. denied*, 507 U.S. 987 (1993)

United States v. Dickerson, 975 F.2d 1245 (7th Cir. 1992), *cert. denied*, 507 U.S. 932 (1993)

McCammon v. Ind. Dep't of Fin. Insts., 973 F.2d 1348 (7th Cir. 1992), *cert. denied sub nom. Ind. Dep't of Fin. Insts. v. Miller*, 507 U.S. 920 (1993)

Luddington v. Ind. Bell Tel. Co., 796 F. Supp. 1550 (S.D. Ind. 1990), *aff'd*, 966 F.2d 225 (7th Cir. 1992), *cert. denied*, 511 U.S. 1068 (1994)

Ooley v. Schwitzer Div., Household Mfg. Inc., 961 F.2d 1293 (7th Cir.), *cert. denied*, 506 U.S. 872 (1992)

United States v. Chappell, 956 F.2d 272 (7th Cir.) (appeal of two habeas corpus actions; district court's decisions affirmed by Seventh Circuit), *cert. denied*, 504 U.S. 927, *and reh'g denied*, 505 U.S. 1231 (1992)

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United States v. Oakley, 944 F.2d 384 (7th Cir. 1991), *cert. denied*, 503 U.S. 949 (1992)

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

Taylor v. Barnhart, 189 F. App'x 557 (7th Cir. 2006) (aff'd in part, vacated and remanded in part) (I affirmed the Social Security Administration's decision denying the application for disability insurance benefits. The appeal challenged the Administrative Law Judge's credibility determination, that the claimant's joint, spinal and mental problems did not constitute listed impairments and that she was capable of performing sedentary work. The Seventh Circuit affirmed the adverse determinations regarding plaintiff's credibility and mental disorders, but vacated and remanded for further proceedings regarding her joint and spinal impairments and ability to perform sedentary work.)

Felder v. McBride, 121 F. App'x 655 (7th Cir. 2004) (Petitioner sought habeas corpus relief from two prison disciplinary board decisions. I denied the petition arising from the first proceeding. (The second petition was decided by another judge.) Petitioner on appeal argued he was denied due process because the Conduct Adjustment Board refused to examine a security camera videotape of an incident between him and a correctional officer. The appellate court vacated the order denying relief and remanded for an *in camera* review of the videotape and a determination as to whether the tape was exculpatory.)

Branham v. Snow, 392 F.3d 896 (7th Cir. 2004) (A Revenue Agent alleged that the IRS refused to hire him as a Special Agent criminal investigator in violation of the Rehabilitation Act. I granted summary judgment for the defendant, finding the plaintiff not disabled because his diabetes did not substantially limit him in a major life activity and that the IRS did not regard him as disabled. The Seventh Circuit affirmed the decision with respect to the "regarded as" claim, but reversed and remanded finding a genuine issue of material fact as to whether the plaintiff was substantially limited in a major life activity.)

Srivastava v. Rosenberg, 88 F. App'x 950 (7th Cir. 2004) (The pro se plaintiff moved to voluntarily dismiss her complaint under Fed. R. Civ. P. 41(a)(1). She subsequently filed a supplemental pleading, which I interpreted as expressing her intent to dismiss her action with prejudice. Accordingly, the action was dismissed with prejudice. The plaintiff then moved to vacate the dismissal under Fed. R. Civ. P. 60(b)(4), contending that the court lacked jurisdiction to dismiss her complaint with prejudice because she had voluntarily dismissed it. This motion was denied and an appeal was taken from that denial. The court of appeals vacated the dismissal with prejudice and remanded the case to be dismissed without prejudice.)

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United States v. Wallace, 355 F.3d 1095 (7th Cir. 2004) (rev'd and remanded) (Following defendant's conviction for mail fraud, I imposed a sentence that included a two-level enhancement under U.S.S.G. § 2B1.1(b)(7)(C) for a violation of a "prior specific judicial or administrative order, injunction, decree or process." The Seventh Circuit reversed that aspect of the sentence and remanded for sentencing.)

Hodgkins ex rel. Hodgkins v. Peterson, 175 F. Supp.2d 1132 (S.D. Ind. 2001), *rev'd* 355 F.3d 1048 (7th Cir. 2004) (I denied a preliminary injunction motion filed by a parent and her children upon finding that Indiana's curfew law did not violate the minors' First Amendment rights and did not violate the due process rights of parents. The Seventh Circuit determined that Indiana's curfew law was not narrowly tailored to serve a significant government interest and failed to allow for sufficient alternative channels of expression, thus reversing the denial of the preliminary injunction and remanding with instructions to enjoin enforcement of the curfew law.)

Harris v. Hanks, 84 F. App'x 680 (7th Cir. 2003) (I denied a petition for habeas corpus relief regarding a Conduct Adjustment Board hearing. The Seventh Circuit vacated that judgment and remanded for further proceedings, finding a conflict in the record as to the impartiality of the chairman of the conduct board that imposed the sanction and also for a determination whether the board had good reasons for finding credible the informant who provided information against the petitioner.)

Williams v. Aztar Indiana Gaming Corp., 351 F.3d 294 (7th Cir. 2003) (A plaintiff alleging that he was a compulsive gambler sued a casino's operators, alleging violations of the federal Racketeer Influenced and Corrupt Organizations (RICO) law and Indiana state laws. I granted summary judgment to the defendants on all claims. The plaintiff appealed only the adverse ruling on his state law claims. On appeal, the Seventh Circuit not only agreed that the federal RICO claim lacked merit, it found that the RICO claim was frivolous and filed solely to invoke federal court jurisdiction. Consequently, it vacated the judgment and remanded the case for dismissal for lack of subject matter jurisdiction.)

Sitar v. Indiana Department of Transportation, 344 F.3d 720 (7th Cir. 2003) (aff'd in part, rev'd in part, and remanded) (Former employee sued, claiming sex discrimination, sexual harassment, and retaliation. I granted summary judgment against the plaintiff on all claims. The Seventh Circuit affirmed on the sex discrimination, sexual harassment, and the retaliatory transfer claims; however, it reversed and remanded as to the retaliatory discharge claim, finding a question of fact as to whether the termination was causally connected to plaintiff's complaints of sex discrimination.)

Wright v. Efficient Lighting Systems, Inc., 63 F. App'x 937 (S.D. Ind. 2002), *vacated and remanded*, No. 02-1852, 2003 WL 2002538 (7th Cir. Apr. 25, 2003)

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(I granted summary judgment in favor of an employer in a race discrimination and retaliation case. The Seventh Circuit vacated and remanded, finding plaintiff established a prima facie case of discrimination and that there was a genuine issue of fact as to whether the employer's stated reason was pretext for discrimination and retaliation.)

Smith v. Barnhart, No. IP01-0916-C-T/F, 2002 WL 1822109 (S.D. Ind. June 4, 2002), *vacated and remanded*, No. 02-2611, 59 F. App'x 901, 2003 WL 1466690 (7th Cir. 2003) (The Seventh Circuit vacated my decision affirming the Administrative Law Judge's denial of Social Security benefits, finding that it was not clear that the Administrative Law Judge's decision was supported by substantial evidence.)

Nwanna v. Ashcroft, No. 02-2405, 66 F. App'x 9, 2003 WL 328126 (7th Cir. 2003) (aff'd in part, vacated and remanded in part) (Former employee of the Federal Bureau of Prisons sued, claiming racial and national origin discrimination, disparate treatment based on plaintiff's working conditions, and retaliatory termination. I granted summary judgment to the defendant on all claims. The Seventh Circuit affirmed the judgment on the disparate treatment claim, but vacated and remanded the retaliation and discrimination claims (based on termination), finding material issues of fact.)

Hammer v. Ashcroft, No. 01-2898, 42 F. App'x 861, 2002 WL 1732580 (7th Cir. 2002) (A federal death-row inmate alleged defendants violated his First Amendment rights by denying and restricting his access to the news media. I dismissed the complaint for failure to state a claim. The Seventh Circuit reversed and remanded, finding error in relying on documents outside the complaint instead of taking the complaint's allegations as true.)

United States v. Danser, 270 F.3d 451 (7th Cir. 2001) (aff'd in part, sentence vacated in part) (A defendant convicted in a child pornography case challenged a portion of his sentence, specifically, the imposition of consecutive terms of supervised release and portions of the restitution order that awarded anticipated future costs of therapy to the minor child. The Seventh Circuit affirmed the restitution order, but vacated the imposition of consecutive terms of supervision.)

Ruth v. United States, 266 F.3d 658 (7th Cir. 2001) (vacated and remanded)) (I denied a motion for a new trial based on a claim of newly discovered evidence in a criminal case as an unauthorized successive motion under § 2255. The Seventh Circuit vacated that denial, finding the motion to be properly considered a new trial motion and remanded with instructions to address the merits.)

United States v. McClendon, No. 00-1737, 10 F. App'x 341, 2001 WL 505976 (7th Cir. 2001) (Federal inmate moved in a criminal case to vacate a Drug Enforcement Administration's administrative forfeiture arising out of his convictions for narcotics and weapons offenses. I denied the motion for lack of

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jurisdiction. The Seventh Circuit vacated and remanded, concluding that the motion should have been construed as a new civil complaint.)

U.S. ex rel. S & G Excavating, Inc. v. Seaboard Surety Co., 93 F. Supp. 2d 968 (S.D. Ind. 2000), *rev'd*, 236 F.3d 883 (7th Cir.), *cert. dismissed*, 532 U.S. 1049 (2001) (I granted the U.S. Postal Service's motion to dismiss a mechanic's lien action brought by a sub-subcontractor on a postal building construction project. The issue was whether a sub-subcontractor is required to meet, in addition to three conditions set by the Miller Act, a fourth requirement, namely, that the mechanic's lien notice include an explicit demand for payment. There was a split in the federal circuits and the Seventh Circuit had not yet decided the issue. In granting the motion to dismiss in favor of the Postal Service, I followed the determination of the majority of the circuits. The Seventh Circuit reversed that judgment, and remanded for further proceedings.)

AGCO Corp. v. Anglin, 216 F.3d 589 (7th Cir. 2000), *reh'g denied* (I denied a motion of a farm equipment dealership and its owners to vacate an arbitration award, and entered a judgment confirming the award for the equipment manufacturer. The Seventh Circuit concluded that the arbitrators exceeded their authority by arbitrating the dispute with a non-signatory to the arbitration agreement, reversed the judgment, and remanded the case for further proceedings.)

Holland v. O'Bannon, No. 97-3935, 175 F.3d 1020, 1999 WL 197224 (7th Cir. 1999) (Plaintiffs sued under 42 U.S.C. § 1983, contending that a state statute extending the time between a denial of parole and the next consideration of a request for parole violated the Ex Post Facto Clause. I dismissed the complaint under 28 U.S.C. § 1915A(b)(1) as frivolous, based on a determination that § 1983 cannot be used to challenge statutes that affect the duration of custody. The Seventh Circuit concluded that the plaintiffs wanted new procedures, not release, and thus vacated the decision and remanded for consideration on the merits.)

United States v. Spears, 159 F.3d 1081 (7th Cir. 1998) (aff'd in part, vacated in part, and remanded) (Defendant was convicted of being a felon in possession of a firearm. He appealed, challenging his conviction based on alleged pre-indictment delay and prosecutorial vindictiveness. He also appealed his sentence, arguing that I erred in my upward departure from the Sentencing Guidelines and in applying juvenile convictions in calculating his criminal history points. The Seventh Circuit affirmed the conviction, but vacated the sentence and remanded for re-sentencing, concluding that an upward departure was justified, but that the defendant's juvenile convictions should not have been used in determining criminal history points and thus the departure was too large.)

Hernandez-Ortiz v. Clark, No. 98-2006, 175 F.3d 1020, 1998 WL 759067 (7th Cir. 1998) (vacated and remanded with instructions to dismiss for want of a case or controversy) (The petitioner was convicted of a local offense in Puerto Rico,

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transferred to federal custody and was subsequently housed in the U.S. Penitentiary in Terre Haute, Indiana. He filed a petition under 28 U.S.C. § 2241, contending that his imprisonment violated U.S. laws because his transfer preceded the formal compact between the federal and commonwealth governments for transfer of prisoners. I denied the petition on the merits. The Court of Appeals vacated the judgment, concluding that there was no case or controversy and that the petition should not have been decided on the merits.)

Willis by Willis v. Anderson Community School Corp., 158 F.3d 415 (7th Cir. 1998), *as amended on denial of reh'g and reh'g en banc* (1998), *cert. denied*, 526 U.S. 1019 (1999) (A high school student suspended for fighting with a fellow student refused to submit to a drug and alcohol test and upon his return to school was suspended again, as required by school policy. He sued, claiming the drug and alcohol testing policy violated the Fourth and Fourteenth Amendments. I denied his request for a preliminary injunction, and entered judgment on the merits for the school corporation. The Seventh Circuit reversed, holding that the school corporation's drug and alcohol testing policy was unconstitutional because it failed to require reasonable suspicion of drug or alcohol use by the student and that the school had not shown that a suspicion-based system would be unworkable.)

Bush v. SECO Elec. Co., 118 F.3d 519 (7th Cir. 1997) (vacating and remanding due to intervening change in substantive law). (SECO moved for summary judgment, raising the acceptance rule as a defense. Bush argued the rule did not apply because she fit into a narrow "humanitarian" exception. I granted summary judgment to SECO. While on appeal, the Indiana Supreme Court decided *Blake v. Calumet Construction Corp.*, 674 N.E.2d 167 (Ind. 1996), which broadened the humanitarian exception to the acceptance rule; thus, the summary judgment was reversed.)

Craddick v. Duckworth, 113 F.3d 83 (7th Cir. 1997) (A Native American inmate alleged that prison officials violated his First Amendment rights to free exercise of his religion by not permitting him to wear a medicine bag. I granted summary judgment for the defendant. The judgment was affirmed on the basis of qualified immunity but the case was remanded for a determination whether an intervening change in prison policy violated the Religious Freedom Restoration Act.)

Mason v. Hanks, 97 F.3d 887 (7th Cir. 1996) (Petitioner sought a writ of habeas corpus, arguing that he was denied effective assistance of counsel on appeal. I denied the petition. The Seventh Circuit reversed, concluding that counsel's failure to pursue an issue on appeal constituted ineffective assistance.)

United States v. McDuffy, 90 F.3d 233 (7th Cir. 1996), *vacated and remanded* (The sentence imposed in this drug conspiracy case was vacated because of an incorrect assessment of relevant conduct and grouping under the Sentencing Guidelines.)

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United States v. Reddrick, 90 F.3d 1276 (7th Cir. 1996) (affirming in part, vacating in part, and remanding due to intervening change in law). (The underlying drug conviction and sentence were affirmed, but a firearm conviction was vacated in light of an intervening change in law, namely, *Bailey v. United States*, 516 U.S. 137 (1995), which narrowed the interpretation of "use" in 18 U.S.C. § 924(c).)

Mercer v. Jordan, No. 94-2639, 73 F.3d 364, 1995 WL 761761 (7th Cir. 1995) (The denial of a habeas corpus petition regarding a prison disciplinary sanction was reversed because of insufficient evidence and the prison authority's denial of the inmates request to obtain certain testimony.)

Beaven v. Scrogham, No. 95-1555, 73 F.3d 364,1995 WL 632468 (7th Cir. 1995) (The dismissal of an arrestee's claim of constitutional violation against a bail commissioner was affirmed, but the dismissal of the false arrest claim against the arresting officer was remanded for further proceedings to determine whether *Heck v. Humphrey*, 512 U.S. 477 (1994), barred that claim.)

Stransky v. Cummins Engine Co., 51 F.3d 1329 (7th Cir. 1995), *aff'd in part, rev'd in part and remanded* (The Seventh Circuit affirmed my dismissal of a claim based on the defendant's failure to update or correct optimistic projections regarding engine shipments and earnings per share in this class action alleging securities fraud, but reversed my dismissal of a claim based on the defendant's projections regarding engine costs and profit margins.)

United States v. Croom, 50 F.3d 433 (7th Cir. 1995) (I imposed a sentence that included an upward departure from the range established by the Sentencing Guidelines based on three reasons. The Court of Appeals vacated the sentence and remanded for resentencing, concluding that two of the reasons were insufficient, allowing reconsideration of departure under the third reason at resentencing.)

Smith v. Martin, Nos. 92-3747, 93-1624, 93-1819, 46 F.3d 1134, 1995 WL 46270 (7th Cir. 1995) (A prison inmate sued under § 1983, bringing several different claims. I dismissed the complaint as frivolous. The Seventh Circuit affirmed the dismissal of all claims except an Eighth Amendment cruel and unusual punishment claim, which it found to be sufficiently pleaded.)

Cincinnati Insurance Co. v. Star Financial Bank, 35 F.3d 1186 (7th Cir. 1994) (An insurer sought a declaratory judgment that its policy provided no coverage for a bank's potential liability in a state court action and that it had no duty to defend the action. I granted partial summary judgment against the insurer. The Seventh Circuit concluded that material questions of fact precluded summary judgment regarding coverage and indemnity.)

Robinson v. Turner, 15 F.3d 82 (7th Cir. 1994), *rev'd and remanded* (I dismissed this Bivens action against Bureau of Prisons officials for failure to properly serve

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the defendants. The Seventh Circuit reversed and remanded to address the Indiana service of process rules.)

Alston v. DeBruyn, 13 F.3d 1036 (7th Cir. 1994) (I dismissed, as frivolous under 28 U.S.C. § 1915(d), a state prison inmate's suit alleging that prison officials denied his civil rights. The Court of Appeals reversed the dismissal, finding that the complaint asserted colorable claims, allowing the plaintiff to cure the deficiencies in his complaint.)

Hill v. Richardson, 7 F.3d 656 (7th Cir. 1993) (After the settlement of this action brought under the Existing Housing Program Act of 1937, I declined to award attorney fees to the plaintiffs having determined that the plaintiffs did not have a colorable claim under § 1983. The Seventh Circuit reversed and remanded with instructions to determine the appropriate award.)

Ellis v. City of Indianapolis, 800 F. Supp. 733 (S.D. Ind. 1992), *rev'd sub nom. Ellis v. Wynalda*, 999 F.2d 243 (7th Cir. 1993) (The Seventh Circuit reversed my grant of summary judgment in favor of the defendant police officer on the basis of qualified immunity on this excessive force claim, concluding that genuine issues of fact regarding the force used precluded summary judgment.)

Union Carbide Corp. v. State Board of Tax Commissioners of State of Indiana, 992 F.2d 119 (7th Cir. 1993) (I dismissed as time-barred a claim by the owners of rail transportation property seeking declaratory and injunctive relief against the State of Indiana for allegedly discriminatory taxation of their rail cars. The Seventh Circuit reversed and remanded for further proceedings, holding that the doctrine of laches rather than the statute of limitations should be applied to determine whether the complaint was timely.)

McCammon v. Indiana Department of Financial Institutions, 973 F.2d 1348 (7th Cir. 1992), *reh'g denied, cert. denied sub nom. Indiana Department of Financial Institutions v. Miller*, 507 U.S. 920 (1993) (The Seventh Circuit disagreed with my summary judgment determination that the plaintiffs did not have a protectible property interest in their continued employment with the State of Indiana.)

Bailey v. City of Lawrence, Ind., 972 F.2d 1447 (7th Cir. 1992), *reh'g denied* (A discharged police officer sued the city and city, alleging violations of § 1983 and state law. I granted summary judgment to the municipality based on an Indiana statute which provided that a person could not be appointed to the police department after having reached thirty-six years of age combined with the interpretation that Indiana had adopted the "coming of age" rule under which a person is considered to have reached thirty-six years of age the day before his thirty-sixth birthday. The Court of Appeals determined that the "coming of age" rule does not apply in this context and, therefore, vacated the summary judgment and remanded the case for further proceedings.)

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Phillips v. Cameron Tool Corp., 950 F.2d 488 (7th Cir. 1991) (The verdict in this products liability case in favor of the defendant was reversed based on erroneous jury instructions.)

Covalt v. Carey Canada, Inc., 950 F.2d 481 (7th Cir. 1991) (I granted summary judgment in favor of the defendant because the plaintiff could not show that he had been exposed to asbestos manufactured by the defendant. The Seventh reversed and remanded, finding a disputed question of fact.)

Taylor v. Nat'l Railroad Passenger Corp., 920 F.2d 1372 (7th Cir. 1990), *reh'g denied* (The denial of a new trial for the plaintiff in an Federal Employers' Liability Act case was reversed because the Seventh Circuit Concluded that an exhibit used in cross examination should not have been admitted.)

Crescent Corp. v. Proctor & Gamble Co., 898 F.2d 581 (7th Cir. 1990) (The issuance of a stay of arbitration in this commercial dispute because the arbitration demand was untimely was reversed, upon the Seventh Circuit's determination that the demand was timely under the agreement.)

United States v. Missick, 875 F.2d 1294 (7th Cir. 1989) (aff'd in part and remanded for resentencing) (The conviction on this drug conspiracy charge was affirmed but the upward departure on the sentence because of the possession of firearms by the recipients of the drugs imported was reversed on a determination that the Sentencing Guidelines adequately considered that aggravating factor.)

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

I interpret "unpublished," in the context of this question, to mean written decisions or rulings that are not maintained by West Publishing© either in case law reporters (such as Federal Supplement or Federal Rules and Decisions) and/or in the Westlaw© or the LEXIS© legal research databases. Some of the decisions that were reversed or criticized (listed and discussed in response to Question 15 c.) were made orally from the bench and not in written opinions. For example, sentencing decisions, evidentiary rulings during trial, and jury instructions are not generally made in written opinions. As a result, there are no written opinions of such reversed or criticized rulings to copy. With respect to the "unpublished" written opinions (as I interpret that term in this context) which have been reversed or criticized (and therefore, not included on the list provided in response to Question 15 a.), they are listed below with the appellate citation and the district court docket number.

Felder v. McBride, No. TH 02-65-C-T/F (S.D. Ind. Aug. 29, 2002), 121 F. App'x 655 (7th Cir. 2004)

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Srivastava v. Rosenberg, No. 1:03-cv-421-JDT-WTL (S.D. Ind. June 11, 2003), 88 F. App'x 950 (7th Cir. 2004)

Harris v. Hanks, No. TH 02-98-C-T/F (S.D. Ind. Aug. 16, 2002), 84 F. App'x 680 (7th Cir. 2003)

Nwanna v. Ashcroft, No. TH 00-108-C-T/H (S.D. Ind. Mar. 29, 2002), No. 02-2405, 66 F. App'x 9, 2003 WL 328126 (7th Cir. 2003) (aff'd in part, vacated and remanded in part)

Hammer v. Ashcroft, No. IP 01-558-C-T/G (S.D. Ind. May 24, 2001), No. 01-2898, 42 F. App'x 861, 2002 WL 1732580 (7th Cir. 2002)

Ruth v. United States, No. IP 94-57-C-T/F (S.D. Ind. Feb. 1, 2001), 266 F.3d 658 (7th Cir. 2001) (vacated and remanded)

United States v. McClendon, No. IP 94-126-CR-3-T/F (S.D. Ind. Jan. 27 & Feb. 16, 2000), No. 00-1737, 10 F. App'x 341, 2001 WL 505976 (7th Cir. 2001)

AGCO Corp. v. Anglin, No. IP 98-0050-C-T/G (S.D. Ind. Aug. 25, 1998), 216 F.3d 589 (7th Cir. 2000), *reh'g denied*

Holland v. O'Bannon, No. TH 97-265-C-T/F (S.D. Ind. Oct. 19, 1997), No. 97-3935, 175 F.3d 1020, 1999 WL 197224 (7th Cir. 1999)

Hernandez-Ortiz v. Clark, No. TH 98-01-C-T/F (S.D. Ind. Mar. 30, 1998), No. 98-2006, 175 F.3d 1020, 1998 WL 759067 (7th Cir. 1998) (vacated and remanded with instructions to dismiss for want of a case or controversy)

Willis by Willis v. Anderson Community School Corp., No. IP 97-2038-C-T/G (S.D. Ind. Jan. 28 & 29, 1998) (same docket; two rulings appealed), 158 F.3d 415 (7th Cir. 1998), *as amended on denial of reh'g and reh'g en banc* (1998), *cert. denied*, 526 U.S. 1019 (1999)

Bush v. SECO Elec. Co., No. IP 94-1383-C-T/G118 (S.D. Ind. June 26, 1996), F.3d 519 (7th Cir. 1997)

Craddick v. Duckworth, No. IP 93-934-C-T/F (S.D. Ind. Oct. 24, 1994), 113 F.3d 83 (7th Cir. 1997)

Mason v. Hanks, No. TH 94-199-C-T/H (S.D. Ind. Aug. 14, 1995), 97 F.3d 887 (7th Cir. 1996)

Mercer v. Jordan, No. IP 93-1624-C-T/G (S.D. Ind. June 23, 1994), No. 94-2639, 73 F.3d 364, 1995 WL 761761 (7th Cir. 1995)

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Beaven v. Scrogham, No. IP 95-166-C-T/G (S.D. Ind. Feb. 14, 1995), No. 95-1555, 73 F.3d 364,1995 WL 632468 (7th Cir. 1995)

Warkel v. Cummins Engine Co., No. IP 90-428-C (S.D. Ind. Sept. 13, 1993), 51 F.3d 1329 (7th Cir. 1995), *aff'd in part, rev'd in part and remanded sub nom Stransky v. Cummins Engine Co.*

Smith v. Martin, Nos. IP 92-1493-C, IP 93-171-C (S.D. Ind. Nov. 2, 1992 & Feb. 18, 1993), Nos. 92-3747, 93-1624, 93-1819, 46 F.3d 1134, 1995 WL 46270 (7th Cir. 1995)

Cincinnati Insurance Co. v. Star Financial Bank, No. IP 90-C-1993-H/G (S.D. Ind. Dec. 23, 1992), 35 F.3d 1186 (7th Cir. 1994)

Robinson v. Turner, No. TH 90-91-C-T/H (S.D. Ind. Sept. 28, 1992), 15 F.3d 82 (7th Cir. 1994)

Hill v. Richardson, No. IP 87-232-C-T/G (S.D. Ind. Aug. 31, 1992), 7 F.3d 656 (7th Cir. 1993)

Union Carbide Corp. v. State Board of Tax Commissioners of State of Indiana, No. IP 91-1711-C-T/G (S.D. Ind. Sept. 2, 1992), 992 F.2d 119 (7th Cir. 1993)

McCammon v. Indiana Department of Financial Institutions, No. IP 91-127-C (S.D. Ind. Oct. 24, 1991), 973 F.2d 1348 (7th Cir. 1992), *reh'g denied, cert. denied sub nom. Indiana Department of Financial Institutions v. Miller*, 507 U.S. 920 (1993)

Bailey v. City of Lawrence, Ind., No. IP 90-C-1422-T/G (S.D. Ind. July 10, 1991), 972 F.2d 1447 (7th Cir. 1992), *reh'g denied*

Covalt v. Carey Canada, Inc., No. TH 86-45-C (S.D. Ind. Aug. 22, 1990), 950 F.2d 481 (7th Cir. 1991)

Taylor v. Nat'l Railroad Passenger Corp., No. IP 87-425-C (S.D. Ind. Jan. 19, 1990), 920 F.2d 1372 (7th Cir. 1990), *reh'g denied*

Crescent Corp. v. Proctor & Gamble Co., No. IP 86-C-222-T/G (S.D. Ind. Aug. 11, 1988), 898 F.2d 581 (7th Cir. 1990)

e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored;

Since approximately 1994, almost all of my decisions and entries which contain substantive rulings, legal analysis, and notable procedural determinations have

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been available in a searchable electronic form on the district court's website (http://www.insd.uscourts.gov) in the section labeled "Research Tools" in the "Search Court Opinions" database. When this database was first made available to the public, I deposited all of my rulings from prior years that were available in electronic form into this database. I believe that Westlaw© and LEXIS© obtained that entire database and incorporated it into their own databases. From the time that the Search Court Opinions database became available to the public, the district court in the Southern District of Indiana has updated our Search Court Opinions database daily to include each written opinion I issue on the date of issuance, and I understand that Westlaw© and LEXIS© incorporate our daily updates into their own databases. From 1987 to 1994, my opinions were published in the West reporters (Federal Supplement and Federal Rules and Decisions) only when West made requests for particular decisions or when I sent them for publication on my own initiative. Any of my opinions and decisions from 1987 through 1993 that are not available from commercial publishers or through the Search Court Opinions database can be found in the files of the Clerk of the U.S. District Court for the Southern District of Indiana. From 1994 onward, the only written decisions that I did not routinely add daily to the Search Court Opinions database, which should also then be available through either Westlaw©, LEXIS©, are decisions in Social Security review and pro se cases. I do not place the majority of Social Security review and pro se opinions into the Search Court Opinions database because they are generally very similar to other decisions of mine already in that or some other publicly accessible database and they generally do not present any novel legal or factual issues. Nonetheless, all of my decisions are on the public record of the court maintained by the Clerk in a sequential docketing system and since 2002, all of this court's dockets and rulings can be accessed by the public through the PACER system.

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

In the ten additional cases in the Seventh Circuit in which I sat by designation, unpublished orders were issued in two of the cases and opinions were authored by other members of the panels in the other eight cases. These are listed below.

United States v. Mosley, No. 93-1829, 35 F.3d 569, 1994 WL 503016 (7th Cir. 1994)

Johnson v. Jochums, No. 93-3678, 28 F.3d 1216, 1994 WL 329432 (7th Cir. 1994) (order issued by panel)

Opinions Authored by another Judge on Panel:

United States v. Humphrey, 34 F.3d 551 (7th Cir. 1994)

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United States v. Johnson, 32 F.3d 265 (7th Cir. 1994), *cert. denied*, 513 U.S. 1182 (1995)

United States v. Williams, 31 F.3d 522 (7th Cir. 1994)

Prymer v. Ogden, 29 F.3d 1208 (7th Cir.), *cert. denied*, 513 U.S. 1057 (1994)

United States v. Abbott, 30 F.3d 71 (7th Cir. 1994)

Gabriel v. United States, 30 F.3d 75 (7th Cir. 1994), *reh'g and suggestion for reh'g en banc denied*

Baravati v. Josephthal, Lyon & Ross, Inc., 28 F.3d 704 (7th Cir. 1994)

Jackson v. Roth, 24 F.3d 1002 (7th Cir. 1994)

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

    a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

    b. a brief description of the asserted conflict of interest or other ground for recusal;

    c. the procedure you followed in determining whether or not to recuse yourself;

    d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

    The U.S. District Court for the Southern District of Indiana uses an automatic recusal system. This is supplemented by individual judicial consideration of recusal requests made by litigants and other sua sponte recusals when appropriate.

    Our court utilizes a random draw to assign cases to the five district judges. I keep a current list of all of our investments on file with the Clerk of the Court which is referred to as my "conflicts" list. The list also includes the name of my wife's law firm and the names of two of my cousins who practice law in the Indianapolis area. The Clerk's staff is instructed that my name is not to be included in the random draw for assignment of any case in which any lawyer with my wife's law firm or my

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specified cousins is a party or represents a party. With respect to some of the investments on the list, such as companies in which we own stock, cases in which those companies are parties are also placed in a random judge draw, without my name as one of the potential judges.

With respect to some of the investments on my conflicts list, such as mutual funds, the Clerk's staff is instructed to bring me any cases assigned to me in which such entities are named as a party so that I can evaluate whether my wife or I have a "financial interest" in the subject matter of the controversy, as defined by 28 U.S.C. § 455(a)(4) and (d)(iii)-(iv); that is, if the outcome of the proceeding could substantially affect the value of our investment.

Finally, both the Court Room Deputy (CRD) assigned to me by the Clerk and I personally check all of the cases assigned to me to verify that all potential conflicts of interest have been caught by the automatic recusal system. My CRD checks newly filed cases and all filings daily and I check all newly filed cases at least monthly.

In each instance in which recusal is sought or in which a potential disqualifying concern is recognized sua sponte, I apply the requirements of 28 U.S.C. §§ 144 and 455 and consider any applicable provisions of the Code of Conduct for United States Judges and the related commentary and advisory opinions of the Judicial Conference Committee on Codes of Conduct and similar provisions of the American Bar Association Code of Judicial Conduct. With respect to recusals that are automatic, the recusal is either initiated by the Clerk of the Court, or reported to the Clerk by me or my staff, and no opinion is issued in the case. The same is true when I decide to recuse sua sponte.

When a recusal is requested by a party, I have generally issued a written opinion addressing whether recusal is to be granted. These cases are listed below. This listing of particular recusal cases is the most comprehensive that I have been able to assemble with the means available to me, but I cannot state with certainty that it is absolutely complete for the entire twenty years that I have served as a judge. I have assembled this list by looking retrospectively through my rulings maintained by the court, by utilizing commercial legal research services, and by searching my memory.

Hadler v. Union Bank & Trust Co., Docket Number IP86-1127-C
Defendant in a civil case moved for my recusal on the grounds that my friendship with a witness in the case would cause partiality or bias. The motion was granted and recusal occurred. The recusal decision is reported at 765 F. Supp. 976 (S.D. Ind. 1991)

Mason v. Hudnut, Docket Number IP 87-37 C (S.D. Ind. July 27, 1990)
Plaintiffs moved for my recusal on the grounds that before I was a judge, I made political contributions to two of the individuals who were later named as defendants in the case. The motion was initially referred to the Chief Judge of the District, the Honorable Gene E. Brooks, who denied the motion as factually

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insufficient to require. The plaintiffs sought a writ of mandamus challenging the decision, and the Seventh Circuit Court of Appeals can be found at 916 F.2d 384.

Spangler v. Sears, Roebuck & Co., Docket Number IP87-1013-C
Defendant in civil case moved for my recusal, asserting that my earlier rulings in the case demonstrated bias and prejudice. The motion for recusal was denied as insufficient, and is reported at 759 F. Supp. 1327 (S.D. Ind. 1991).

Lloyd G. Perry v. Linda Barnard et al., Docket Number EV88-24-C
Pro se plaintiff moved for my recusal, contending that my rulings in the case demonstrated bias and prejudice. The motion was denied as insufficient in a written ruling.

George Wade et al. v. Gordon Smith et al., IP88-C-0065-T/F and related cases, IP88-C-1417 through 1422, 89-C-375 and 89-771.
The plaintiffs filed a Notice of Disqualification of Judge in IP88-C-0065. Subsequently, counsel for one of the parties filed a notice that an investigatory matter related to the underlying bankruptcy in this case was referred to the office of the United States Attorney in this district during the time I was United States Attorney. The initial notice of disqualification in IP88-C-0065 alleged that preliminary rulings demonstrated bias on my part. The subsequent notice from the United States Attorney's Office suggested that because of the pendency of the referred investigative matter in that office during my tenure, there might be grounds for disqualification. The plaintiffs' Notice of Disqualification in IP88-C-0065 was referred to Chief Judge Gene E. Brooks for a determination of its sufficiency. The Chief Judge determined that no basis for recusal had been shown. Upon receipt of the subsequent notice from the United States Attorney's Office regarding the pendency of the investigative matter, I sua sponte recused from presiding in IP88-C-1417 and all of the related cases, including IP88-C-0065-T/F.

Evans v. Thompson, TH 89-29-C (S.D. Ind. Jan. 28, 1993)
Pro se plaintiff filed motion seeking recusal asserting that rulings I made adverse to him in this and a prior case demonstrated bias. The motion was denied in a written entry as the allegations were insufficient to require recusal.

United States v. Kehlbeck, Docket No. IP90-73-CR
Defendant in criminal case moved for recusa citing prior social contacts between the defendant and me, and prior social and political contacts between a potential sentencing witness and myself. Recusal was denied because the basis of the request was insufficient to support recusal under §§ 144 and 455. This decision is reported at 766 F. Supp. 707 (S.D. Ind. 1990).

United States v. Cross, Docket Number TH 91-13-CR (S.D. Ind. Sept. 23, 1992)
Defendant in criminal case filed a pro se motion seeking my recusal. The criminal complaint charging the defendant with escape from the federal prison in

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Terre Haute was filed before I became United States Attorney, but was pending on the docket of the court during my tenure as United States Attorney. He was indicted on the escape charge about three years after I became a judge. The defendant contended that the pendency of the criminal complaint during my years as United States Attorney provided me with extrajudicial knowledge about the circumstances of his case. The motion was granted in a written entry.

Freeman v. Sports Car Club of Am., Inc., Docket Number IP 92-1767-C (S.D. Ind. Sept. 9, 1993)
Motion by plaintiff. Plaintiff asserted that comments I made during an informal scheduling conference with counsel for the parties demonstrated partiality or bias on my part against the plaintiff or his case. The motion was granted in a written entry.

United States v. Gevedon, Docket Number IP 96-CR-139-T/F (S.D. Ind. Dec. 16, 1998)
Defendant in a criminal case filed a pro se motion seeking my recusal. The defendant asserted that information I received while handling this case and a related civil case provided extrajudicial information which would prevent me from being fair and impartial. The defendant also contended that rulings that I had made in this case adverse to him demonstrated bias and prejudice. The motion was denied in a written entry as insufficient to require recusal.

Joseph York v. Jake Brooks, Docket Number IP00-1054
Motion to recuse filed by pro se plaintiff alleging bias based on adverse rulings. The motion was denied in a written ruling as insufficient to require recusal.

United States v. Ralph Taylor, Docket Number IP01-C-T/F
Motion for disqualification filed by petitioner Taylor alleging bias based on rulings adverse to the pro se petitioner in criminal case and in the post-conviction relief proceeding. The motion was denied in a written ruling as insufficient to require recusal.

Phifer v. Indiana Department of Correction, Docket Number TH02-C-152-T/L
The pro se plaintiff moved for recusal on two occasions in the form of motions for change of venue. The plaintiff asserted that adverse rulings demonstrated bias. The motions were denied in written entries as insufficient to require recusal.

Phifer v. Larry J. McKinney, Chief Judge, Docket Number 2:03-cv-0214-DFH-WTL
I sua sponte noticed the recusal issue. When this case was assigned to me, another suit by the plaintiff in which I was named as a defendant, *Phifer v. John D. Tinder et al.*, Docket Number 2:03-cv-0197-LJM-WTL, was pending. A sua sponte recusal was effectuated.

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Joseph Taylor v. Zettie Cotton, Docket Number 2:03-cv-0224-JDT-WTL
The pro se petitioner in this habeas corpus proceeding argued in a post-judgment motion to reconsider that the denial of his petition showed bias. The plaintiff asserted that my rulings showed bias and prejudice, and disqualified me from presiding in this case. The implicit motion to recuse was denied in a written ruling on the motion to reconsider as insufficient to require recusal.

Joseph Taylor v. Zettie Cotton, Docket Number 2:03-cv-0225-JDT-WTL
The pro se petitioner in this habeas corpus proceeding argued in a post-judgment motion to reconsider that the denial of his petition showed a basis. : The plaintiff asserted that my ruling relied on information received outside the record and that the receipt of extrajudicial information should have disqualified me from presiding. The implicit motion to recuse was denied in a written ruling on the motion to reconsider as insufficient to require recusal because the ruling denying his petition did not rely on extrajudicial information.

Srivastava v. Rosenberg, et al., Docket Number 1:03-cv-0421-JDT-WTL
Motion for disqualification filed by pro se plaintiff allenging bias based on rulings adverse to the plaintiff. The motion was denied in a written ruling as untimely and insufficient to require recusal.

Torm Howse v. Monika Talbot, et al., Docket Number 1:03-cv-0986-JDT-WTL
The pro se plaintiff moved for a change of judge which was, in effect, a motion for recusal. The plaintiff asserted that my failure to rule summarily in his favor disqualified me from continuing to preside in his case. The disqualification request was denied in a written ruling as insufficient to require recusal.

Torm Howse v. Roger McKinley, Docket Number 1:03-cv-1173-JDT-TAB
The pro se petitioner for a writ of habeas corpus seeking release from an Indiana prison moved for my recusal. The plaintiff asserted that my rulings in his prior case discussed above and in this case showed bias and prejudice and a personal and financial interest in the outcome of his litigation. The motion was denied in a written ruling as insufficient to require recusal.

Timothy Parks v. Evelyn Ridley-Turner, et al., Docket Number 1:03-cv-1741-JDT-TAB
The pro se plaintiff moved for a change of judge which was, in effect, a motion for recusal. The plaintiff asserted that my rulings in another case of his (which he incorrectly contends was a suit against me and other judges in this district; Docket Number IP95-1231) showed bias and prejudice and disqualified me from presiding in this case. The motion for change of judge was denied in a written ruling as insufficient to require recusal.

United States v. Patrick Pride, Docket Number 1:04-CR-0171-01
Motion to disqualify filed by defendant in this criminal case. The Indictment alleged conduct by the defendant that was threatening and harmful to the Clerk of

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the Court and her employees. The defendant asserted that this could have caused bias on my part. The motion was granted in a written entry, with a suggestion that all of the judges in this district be recused from the case. The recusal of all of the judges was effectuated and a judge from outside the district was appointed to preside.

Louis Gaines v. White River Environmental Partnership, et al., Docket Number 1:04-cv-0320-JDT-TAB

The pro se plaintiff's complaint and proposed amended complaint sought disqualification of all judges who had presided over his prior litigation regarding this dispute. The plaintiff asserted that prior rulings in his other litigation demonstrated bias. The disqualification request was denied in a written ruling as insufficient to require recusal.

Torm Howse, et al. v. The State of Indiana, Docket Number 1:04-cv-1530-JDT-TAB

The pro se plaintiff suggested in a post-judgment motion to reconsider that I should have recused from the case. The plaintiff asserted that my rulings in his other two cases discussed above showed bias and prejudice and disqualified me from presiding. The disqualification request was denied in a written ruling as insufficient to require recusal.

United States v. Shaaban, Docket Number IP05-34-CR-01-T/F (S.D. Ind. Dec. 20, 2005)

The defendant in a criminal case moved for my recusal. The defendant asserted that my rulings adverse to him demonstrated bias. The motion was denied in a written entry as insufficient to require recusal.

United States v. Sarfraz Kahn, Docket Number 1:05-CR-0060-01

Sua sponte recusal. Shortly after assignment of this criminal case to me, I noticed that the entity alleged to be the victim of the crime charged was FedEx. I owned FedEx stock at the time of the prosecution. The Clerk of the Court was notified of my recusal through a memo from me. The recusal was effectuated and another judge from the district was assigned.

United States v. Lawrence David Sowers, Docket Number 1:07-CR-0069-01

The defendant in this criminal case moved for my recusal. I served as the attorney for this defendant in a criminal case in an Indiana court in 1978. : The Clerk of the Court was notified of my recusal through a memo from me. No opinion was written. The recusal was effectuated and another judge from the district was assigned.

17. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

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you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

United States Attorney, Southern District of Indiana, May, 1984 to September 10, 1987 (Appointed by President Ronald Reagan)

Deputy Prosecutor, Marion County, Indiana, January 1979 to January 1983 (Appointed by Prosecutor Stephen Goldsmith)

Assistant United States Attorney, Southern District of Indiana, July 1975 to August 1977 (Appointed by Attorney General Edward Levi and United States Attorney James B. Young)

Member, Bloomington, Indiana Housing Quality Appeals Board, January1973 to June 1974 (Appointed by Mayor Frank McCloskey)

Member, Bloomington, Indiana Parks and Recreation Board, January 1972 to January 1973 (Appointed by Mayor Frank McCloskey)

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

18. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a law clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

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09/1987 to Present	United States District Judge Southern District of Indiana Birch Bayh Federal Building and U.S. Courthouse 46 East Ohio Street, Room 304 Indianapolis, Indiana 46204
05/1984 to 09/1987	United States Attorney Southern District of Indiana United States Department of Justice 10 West Market Street, Suite 2100 Indianapolis, Indiana 46204
05/1982 to 05/1984	Associate Harrison and Moberly, Attorneys at Law Market Tower, Suite 700 10 West Market Street Indianapolis, Indiana 46204
08/1977 to 05/1982	Partner Tinder & Tinder, Attorneys at Law 808 First Federal Building Indianapolis, Indiana 46204
01/1979 to 01/1983	Deputy Prosecutor (Chief Trial Deputy) Marion County Prosecutor's Office 251 East Ohio Street Indianapolis, Indiana 46204
08/1977 to 12/1978	Public Defender Marion County Superior Court, Criminal Division, Room Number 3 City-County Building, Room 242 Indianapolis, Indiana 46204
08/1975 to 09/1977	Assistant United States Attorney Southern District of Indiana United States Department of Justice 10 West Market Street Indianapolis, Indiana 46204
04/1975 to 08/1975	Associate Tinder & O'Donnell, Attorneys at Law 808 First Federal Building Indianapolis, Indiana 46204

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b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Associate, Tinder & O'Donnell, April 1975 to August 1975 - I assisted in pre-trial investigation and preparation of civil and criminal matters. I conducted legal research, drafted pleadings and memoranda, and otherwise assisted the two lawyers in the firm. I also made court appearances and otherwise represented clients of the firm. I handled a few court trials on my own, and assisted other attorneys in several court and jury trials.

Assistant United States Attorney, Southern District of Indiana, August 1975 to August 1977 - I was responsible for the preparation and trial of civil and criminal cases. In addition to trial duties, I was responsible for advising federal agents on legal questions arising during investigations, and for accepting or declining prosecution after the completion of investigations. I also served as grand jury supervisor, a duty that was rotated monthly among Assistants. This required scheduling grand jury sessions, the appearance of witnesses, and the return of indictments before the District Court. As supervisor, I was responsible for presenting my own cases, and those of other Assistants who were unavailable. I served as grand jury supervisor for a total of four months during my tenure as an Assistant. Each Assistant was responsible for handling his or her own cases on appeal to the Seventh Circuit Court of Appeals. During my employment as an Assistant, I appeared before the Seventh Circuit for oral argument more than ten times.

Partner, Tinder & Tinder, August 1977 to May 1982 - In the first several months of private practice with my father, I handled primarily personal injury, corporate, and domestic matters, along with most of the criminal cases undertaken by the firm. My clientele later grew to include several small businesses and larger civil matters, for which I handled jury trials and appeals. I also accepted several pauper counsel appointments for criminal cases in the U.S. District Court for the Southern District of Indiana. While in private practice, I also served as a part-time public defender, and later as chief trial deputy for the Marion County Prosecutor's Office (at which time our firm ceased handling criminal cases).

As a part-time public defender, I was responsible for representing indigents charged with felonies, ranging from minor thefts to first-degree murder. This included pre-trial preparation, plea bargaining, jury and court trials (on average one or more a month), and some appeals in the Indiana Court of Appeals and the Indiana Supreme Court.

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As second in command in the state's largest prosecutor's office, I was primarily responsible for supervising the forty felony-trial deputies in the six Marion County criminal courts. This involved approving or rejecting plea bargains, developing trial strategy, handling witness issues, screening proposed cases, conducting legal research, and related matters.

Associate, Harrison & Moberly, May 1982 to May 1984 - My practice concentrated on commercial litigation. I also served as general counsel to a life insurance company, a residential builder, an automobile dealership, and several other small businesses.

United States Attorney, Southern District of Indiana, May 1984 to September 1987 - The Southern District encompasses sixty counties and approximately two-thirds of the population of the State of Indiana. As U.S. Attorney, I was responsible for executing the statutory duties of the office prescribed by 28 U.S.C. §547, *i.e.*, prosecuting all violations of federal criminal and civil laws; prosecuting and defending all civil actions in which the United States and its officers are parties; instituting and prosecuting actions for collection of fines, penalties, and forfeitures; and making reports requested by the Attorney General. I also served as a member, and later vice chairman, of the elite Attorney General's Advisory Committee, comprised of ten U.S. Attorneys from across the country. With three other U.S. Attorneys, I served on the U.S. Sentencing Commission Liaison Group, which provided input to the Sentencing Commission's development of mandatory federal sentencing guidelines. Finally, I was one of two U.S. Attorneys appointed to serve on the Executive Working Group for Federal and Local Prosecutorial Relations. This group, which also included representatives of the National District Attorneys' Association, the National Association of Attorneys General, and the U.S. Department of Justice, met three or four times a year to discuss and resolve issues of interest to the various levels of prosecuting agencies.

ii. your typical clients and the areas, if any, in which you have specialized.

As a federal prosecutor, the majority of my work was in the criminal area, but I also had responsibility for a civil caseload, including trial and appellate representation of such federal agencies as the Bureau of Prisons; the Department of Health, Education, and Welfare; the Environmental Protection Agency; the Food and Drug Administration; the Internal Revenue Service; and the Veterans Administration.

In private practice I represented businesses and individuals in contract, real estate, zoning, class action, personal injury, and civil rights actions. I also represented clients on corporate and insurance issues.

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c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Approximately 60% of my practice was in litigation. I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 60%
   2. state courts of record; 40%
   3. other courts.

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings. 60%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Sole counsel: more than fifty (50+); Chief counsel: approximately twelve (12); Associate counsel: Approximately twelve (12)

i. What percentage of these trials were:
   1. jury: 85%
   2. non-jury. 15%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

The only matter that I recall being involved with in practice which was directed to the Supreme Court of the United States is *State v. McMillan,* in which a petition for a writ of certiorari was filed by the defendants. I assisted in the preparation of a brief for the prosecution in opposition to the petition. The petition was denied without argument. I do not have a copy of our brief in opposition.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

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b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. John D. Lind*, IP76-61CR, United States District Court, Southern District of Indiana, Honorable Cale J. Holder (deceased), 1976-1977.

The first seven counts of the indictment charged John D. Lind, a medical doctor from Anderson, Indiana, with the possession and use of explosives which resulted in the bombing of a plumbing supply company. The final two counts charged Lind with conspiring to obstruct justice and the obstruction of justice with regard to the investigation of the bombing. This case presented several complicated legal and factual problems. For example, one of the government's chief witnesses, who had participated in conversations with both Lind and other conspirators, was found decapitated prior to trial. This posed difficult problems in the admissibility of tape recordings of those conversations. Lind's nationally known defense counsel, F. Lee Bailey, presented a vigorous defense. The defense had numerous and novel pre-trial, trial, and post-trial legal maneuvers to make the prosecution effort more difficult. A wide variety of scientific and technical methods were used as evidence in this trial. The jury returned guilty verdicts on five of the explosive-device counts, and a not guilty verdict on the obstruction of justice counts. Lind was sentenced to nine years imprisonment, and his conviction was affirmed on appeal. During the six-month investigation and the trial, I was co-counsel for the United States with Mr. Goodloe. I wrote the appellate brief and presented the Government's oral argument in the Seventh Circuit.

Co-Counsel:	Charles Goodloe, Jr. Assistant United States Attorney 10 West Market Street, Suite 2100 Indianapolis, Indiana 46204 (317) 229-2404
Opposing Counsel:	Attorneys for Lind F. Lee Bailey (address and phone number unknown) Mark W. Shaw (last known address and phone number) 4154 State Road 135 Nashville, IN 47448-9067 (812) 988-8215

2. State of Indiana v. Michael O. Brooks, CR77-307C, Marion County Criminal Court, Honorable Charles C. Daugherty (Retired), 1977

I was appointed as a public defender to represent Mr. Brooks on a charge of first-degree murder. The defendant gave a videotape confession prior to requesting an

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attorney. After the confession, my client contended that the killing was in self-defense, despite the fact that he had stabbed the decedent nineteen times. Before trial, the State's best offer was a mandatory term of life imprisonment. During the course of preparing the case for trial, I discovered some evidence regarding the circumstances of the death that the police had overlooked. Through the presentation of that additional evidence, along with a carefully focused challenge of the State's evidence, the defendant was able to obtain the more favorable verdict of the lesser included offense. The jury returned a guilty verdict on the lesser included offense of second-degree murder and recommended a sentence of fifteen to twenty five years instead of life imprisonment. The Judge imposed the recommended sentence. On appeal, the conviction was affirmed, 434 N.E.2d 878 (Ind. 1982).

Opposing Counsel: Richard Plath
Deputy Prosecutor
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(317) 327-5297

3. *State of Indiana v. Gary Burris,* CR80-053A, Marion County Superior Court, Honorable John W. Tranberg (Deceased), 1980

I represented the State of Indiana. The defendant was charged with the murder of an Indianapolis cab driver during the course of a robbery. The State asked for the death penalty. The evidence involved the testimony of co-defendants and a complicated chain of circumstantial evidence. The jury was sequestered during the trial due to concern about exposure to the expected intensive media coverage during trial. After returning a guilty verdict, the jury recommended the death penalty. The sentencing judge accepted the recommendation. The conviction was affirmed 465 N.E.2d 171 (Ind. 1984)

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4. *State of Indiana v. Richard Moore*, 2SCR80-005, Hamilton County Superior Court, The Honorable Jerry M. Barr (Retired), 1980

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Richard Moore was accused of killing his wife, her father, and a police officer in a shooting spree. The State requested the death penalty. This case was unique in two respects. First, the defendant pleaded guilty to the underlying murder charges, which resulted in a sentencing trial to the court without a jury. This was the first time since the reinstitution of the death penalty that a defendant in a capital case had pleaded guilty in Indiana. Second, one of the bases for the death penalty was that one of the victims was a law enforcement officer. Whether the defendant was aware that the victim was a police officer was hotly disputed. This required resolution of a complex legal question as to the intent required to impose the death penalty under this provision. At the completion of a three-day sentencing trial, Moore was sentenced to death. The sentence was affirmed on direct appeal to the Indiana Supreme Court. I was sole counsel for the State in this prosecution.

Opposing Counsel: Wilmer E. Goering II
West 6th Street
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5. *State of Indiana v. Sanford Marshall*, CR81-007A, Marion County Superior Court, The Honorable John W. Tranberg (Deceased), 1981.

This was a murder prosecution of an accomplice in a robbery-murder resulting in the deaths of two deputy sheriffs. During the robbery, Marshall posed as a customer, and was serving as the look-out. The other robber forced the store employees and customers into a back room and had them bound and gagged. Marshall and the other robber acted as if Marshall were being forced to bind and gag the hostages. When the police arrived, a shoot-out ensued. Rather than running, Marshall taped his wrists and lay on the floor with the hostages. His partner was killed in the shootout. After employees and customers were taken out of the store by police, Marshall, who had continued to play the role of a hostage, disappeared into the crowd. For the most part, the hostages were unaware of Marshall's role in the robbery. Marshall also took on a very different appearance after his escape from the store, which posed major identification problems. This unique set of facts presented an interesting test of the felony-murder rule in Indiana. A careful investigation disclosed contact between the other robber and Marshall prior to the robbery, including the fact that on the afternoon of the robbery, Marshall had supplied his partner with a firearm which resembled the murder weapon. At trial, Marshall's defense was based partly on coercion and partly on alibi. As might be expected, the trial was quite dramatic, and the families of the victims and the defendant were emotionally involved. At one point in the trial, Marshall lunged across counsel's table and tried to grab my associate counsel. The defendant was convicted and the jury recommended against the death penalty. Marshall was ultimately sentenced to a long term of imprisonment rather than death. Mr. Winingham and I shared the preparation of this case for trial and the trial responsibilities, representing the State of Indiana.

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Associate Counsel:	William E. Winingham 2859 North Meridian Street Indianapolis, Indiana 46206-1317 (317) 920-6400
Opposing Counsel:	Dwight Ritter 2869 India Street San Diego, California 92103 (619) 296-0123

6. *State of Indiana v. Harry E. Ferguson,* CR79-2608, Marion County Superior Court, The Honorable Webster L. Brewer (Retired), 1979; Indiana Supreme Court, 680S164; United States Supreme Court, 80-6130, 409 N.E. 2d 615 (*sub nom State v. McMillan*), *cert. denied* 450 U.S. 1003 (1981)

Harry E. Ferguson was charged with robbery and, because of prior felony convictions, a sentence enhancement was sought under Indiana's habitual offender statute. Under Indiana law, in addition to deciding the underlying charge, the jury must decide whether the elements of the habitual offender enhancement have been proved beyond a reasonable doubt. The jury was unable to reach a verdict on the habitual offender sentence enhancement, and a mistrial was declared. At about the same time, similar mistrials occurred in two other cases handled by the Marion County Prosecutor's Office, namely *State v. Hubert McMillan* and *State v. Albert Lee Woods*, as well as in several other counties throughout the state.

In each case, we sought to have sentencing hearings re-set on the habitual offender portions of the trials. Each request was denied. The State appealed each case to the Indiana Court of Appeals, where the cases were consolidated and transferred to the Indiana Supreme Court. The Indiana Supreme Court ruled in favor of the State and permitted retrial on the habitual offender sentence enhancement. The defendants sought a writ of certiorari from the United States Supreme Court, which the Court denied.

The case resolved two important issues: First, whether the State was authorized to appeal the trial courts' rulings; second, whether the protection against double jeopardy permitted a partial retrial in these cases. The State ultimately prevailed on both questions, although the Indiana Supreme Court was not explicit in finding a basis for its appellate jurisdiction. As the Indiana Supreme Court noted, this was a case of first impression in this state. It resolved issues that were important to prosecutors throughout Indiana. At retrial on the habitual offender enhancement, the jury found that the defendant had the prior convictions alleged and the enhancement was added to his sentence on the robbery charge.

I was trial counsel, representing the State of Indiana, at all of the *Ferguson* proceedings, and I was co-counsel with Mr. Small and Mr. Worden on the appeals of all three cases in

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the Indiana Supreme Court and on the opposition to the petition for writ of certiorari in the United States Supreme Court.

Associate Counsel: (on Indiana and U.S. Supreme Court brief)
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7. State of Indiana v. Anthony E. Peterson, CR79-003, Hamilton County Circuit Court, The Honorable Paul H. Johnson, 1979. 448 N.E.2d 673 (Ind. 1983)

I was the prosecutor in this case in which the defendant was charged with committing a murder during the course of a drug store robbery. This was a death penalty case, one of the first such cases tried in Indiana since the early 1960's. The trial, including suppression hearings and jury selection, lasted nearly three full weeks. The trial itself was long and vigorously contested. A variety of issues, such as the admissibility of expert testimony on the subject of eyewitness identification, the admissibility of testimony from a witness who had undergone hypnosis to refresh his recollection, conflicting evidence on searches, and an alibi defense also posed major problems for the prosecution. The jury returned a verdict of guilty on the murder and robbery charges but recommended against the imposition of the death penalty. The defendant was sentenced

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to a term of imprisonment of sixty years. Ultimately, the Indiana Supreme Court reversed the conviction because of the use of hypnosis, and clearly established a rule of evidence prohibiting the use of post-hypnotic testimony in Indiana courts. Prior to this case, no Indiana case had been decided on the subject and the case law of other jurisdictions was split. Peterson was eventually retried without the post-hypnotic evidence, and was again convicted of these serious charges. I was not directly involved in the second trial because of schedule conflicts.

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8. *William J. Prater v. U.S. Parole Commission and ThomasJ. Keohane, Warden*, 84-1121, United States Court of Appeals, Seventh Circuit, Presiding Judge: Rehearsing en banc, Chief Judge Cummings presiding. 802 F. 2d 948 (7th Cir. 1986)

William J. Prater was one of the three men who conspired to kill United Mine Workers president Joseph Yablonski in 1969. Prater was also a Mine Workers official whose role in the conspiracy was to transfer union pension funds to the triggerman in payment for the murder. Prater pleaded guilty to the federal crime of conspiring to injure a United States citizen in the exercise of his federal rights, a violation of 18 U.S.C. 241. Prater was given a life sentence under which he would become eligible for parole in ten years.

Prater was incarcerated at the United States Penitentiary at Terre Haute, Indiana, when he became eligible for parole. The Parole Commission denied Prater's initial request for parole because it determined that release would depreciate the severity of his offense.

Prater sought habeas corpus relief in the United States District Court, contending the grounds on which his parole had been denied had been enacted into law after his crime, thus violating the constitutional provision against *ex post facto* laws. The government contended that the *ex post facto* provision was inapplicable because the statute and guidelines in effect at the time of Prater's crime were sufficiently broad to encompass the

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principle of depreciation of the severity of the offense. For that reason, denial of parole was a possibility which Prater faced when he was sentenced.

The writ was denied by the district court in a decision reported at 575 F. Supp. 284 (S.D. Ind. 1983) Prater appealed, and the Seventh Circuit reversed the district court decision and remanded the case for a hearing in an opinion reported at 767 F.2d 1230 (7th Cir. 1985). The government petitioned for rehearing en banc, which was granted.

Assistant United States Attorney Carolyn Small was the principal author of the government's briefs. I presented the government's oral argument before the Seventh Circuit at the rehearing en banc. After rehearing, the decision of the trial court to deny the writ was reinstated.

Co-Counsel: (on the briefs)
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Opposing Counsel: James J. Barrett (last known contact information)
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Stanton, Kentucky 40380
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9. *United States v. Eli Lilly and Company and United States v. William Ian H. Shedden*, IP85-53CR and IP85-54CR, United States District Court for the Southern District of Indiana, The Honorable S. Hugh Dillin (Deceased), 1985.

Eli Lilly and Company and Dr. Shedden were charged with violations of Food and Drug Administration laws related to the drug Benoxaprofen (Oraflex). The litigation was terminated without trial because Lilly and Dr. Shedden pleaded guilty to all 15 counts of the charging informations.

This case was one of the first of its kind in the nation. Although the statutes had been in effect for many years, they were rarely utilized. The factual issues were highly technical and extremely complex. Lilly had developed Oraflex primarily to treat the symptoms of arthritis. Because of a series of adverse reactions, including several deaths, it was believed that Lilly had failed to properly report certain adverse reactions during the testing and marketing stages of the development of the drug. Civil litigation about the Oraflex adverse reactions was underway throughout the country. The criminal litigation served to fully investigated the allegations and dealt with difficult issues of personal and corporate criminal liability. The decisions whether to charge Lilly criminally and which, if any, individuals should be charged were complex matters involving discussion and debates at the highest levels of the Department of Justice and the Food and Drug

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Administration. Likewise, whether the charges should be felonies or misdemeanors was not easily resolved. I participated in these conferences and played a role in developing the ultimate outcome, although the final decision was made by the Deputy Attorney General. The investigative work-up of the case and the witness examinations were conducted by Ms. Golden and Ms. Johnson.

Co-Counsel: Vicki G. Golden
Anita Johnson (I do not know if these lawyers are still with the Department of Justice)
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Charles F.C. Ruff (Deceased)
for William Ian H. Shedden
Daniel F. Evans
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(317) 332-7602

for William Ian H. Shedden
Gerald A. Feffer
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Washington, DC 20005

10. *United States v. Merchants National Bank & Trust Co.*, IP86-105, United States District Court for the Southern District of Indiana, The Honorable S. Hugh Dillin (Deceased), 1986.

This investigation of a major national bank for violations of the Bank Secrecy Act, specifically 21 U.S.C. §§ 5313 & 5322, was conducted under my supervision as United States Attorney. This was one of the first bank prosecutions under this version of the Act. Assistant United States Attorney Warden conducted the day-to-day aspects of the investigation. I supervised his work and participated in the plea negotiations which

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resulted in a felony conviction for the bank and a substantial fine and sentence of carefully monitored probation. The resolution of this case was unique for its time and was a model utilized in subsequent investigations. This prosecution has been credited for enhanced compliance with the Act by banking institutions in this jurisdiction.

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Opposing Counsel: Forrest B. Bowman, Jr.
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David L. Zoeller
c/o National City Bank
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Cleveland, Ohio 44114
(216) 222-2000

20. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The opportunities I had to participate in litigation early in, and frequently throughout, my career have provided me a special perspective on litigation skills which I have attempted to share with others. Beginning in 1980, I joined three other experienced litigators and a permanent faculty member at Indiana University School of Law-Indianapolis to teach a litigation skills course. We developed the structure of the course with the guidance of Professor James McElhaney of Case Western School of Law, a widely regarded expert in teaching trial skills. Our course combined a series of lectures on the fundamental techniques of courtroom advocacy with actual witness examinations, jury arguments, and other aspects of trial skills. The course is still one of the most popular offerings at the law school, and is still taught by one of the original lawyers who developed it, and he teaches it with some of the former students from the course who have gone on to excel in courtroom advocacy. Although my active involvement in the course ended in 1990, I am proud that the tradition of learning litigation skills by practicing them in a realistic setting continues. The quality of this course was recognized in December of 1983 when the law school was awarded the Emil Gumpert Award by the American College of Trial Lawyers for excellence in the teaching of trial advocacy.

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I also sought to foster improvement in trial advocacy by forming a trial skills training program in the Marion County Prosecutor's office when serving as Chief Trial Deputy and by participating as an instructor in several trial advocacy programs offered by the National Institute of Trial Advocacy and the United States Attorney General's Advocacy Institute.

As a judge, I have had the opportunity to participate in the development of ways to make the litigation process more efficient. Beginning in 1988, I started working with the staff of our clerk's office to develop automation systems which began with making basic personal computers available to each judge's staff to allow the use of computer-assisted legal research. Today we have a sophisticated interactive network which includes electronic filing of virtually all of the pleadings and papers in civil and criminal cases and sharing scheduling information, jury instructions, and other information among the judges on our court. Lawyers and the public have continuous access to all of the materials on our dockets and we are able to process a large volume of litigation in a reasonably efficient manner. We have also developed courtrooms which incorporate the latest technology for efficient presentation of visual and audio exhibits to the jurors and judge, as well as other features that improve the needed communication skills for litigation. Throughout this, I have been the sponsoring judge for our technological innovations. We formed working groups consisting of lawyers who practice frequently in our court and the technology staff of our court to coordinate the needs of those who litigate in our courts with the needs of our staff. This work also caused me to become involved on the national level of court automation by serving as the chair of a committee (formed by the Administrative Office of the U.S. Courts and the Committee on Automation and Technology) of judges, clerks, automation specialists, librarians, and other court personnel develop new and effective ways of incorporating automation concepts to improve the efficiency of the judicial process. Subsequently, I served on the Committee on Automation and Technology of the Judicial Conference which furthered my involvement in incorporating the efficiency of automation to help meet the needs of the courts on a national basis.

Interaction with judges from other judicial systems throughout the world has also been an interesting opportunity for sharing aspects of the American legal system with others. I have visited England and the former republic of Yugoslavia to participate in programs about substantive, procedural, and ethical issues presented to courts. I have also hosted judges from, among other places, Russia, China, and South Korea. Most recently, this February, along with a judge from our state court system, I hosted a judge from Kobe, Japan, so that he could study in depth how we work with jurors. In 2009, Japan will resume utilizing civilian jurors in criminal cases, which has not been done since before the Second World War. Japan is very interested in the American jury system and this allowed me to demonstrate some of the methods we use to make the jury experience a meaningful one for our jurors.

Judges are often asked to speak at bar association functions and to law school groups. This has provided me with opportunities to talk about the pro bono representation program utilized by our court through our Local Rule 4.6. We have developed a list of

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lawyers who are willing to assist pro se litigants when needed, and this has provided much needed litigation help for some indigent litigants and at the same time has allowed lawyers to sharpen their trial skills in making meaningful presentations in difficult cases. I try to use speaking opportunities to develop interest in this program whenever possible. Another topic that I often emphasize at bar and law school programs is the importance of public service and pro bono service by those in the legal profession.

Finally, from 1991 until 1993, the Southern District of Indiana participated in a pilot program of allowing cameras and recording devices in trials and hearings. The program was conducted by the Federal Judicial Center on behalf of the Judicial Conference. I served as the court's liaison with media organizations in developing guidelines and rules for this program.

21. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

From 1980 until 1990, I taught a course in trial advocacy at the Indiana University School of Law-Indianapolis along with several other lawyers and a permanent law school faculty member. The course was designed to allow law students to learn about trial techniques through listening to lectures from experienced litigators and through mock witness examinations, arguments, and trials.

22. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

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25. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I would be presented with a conflict of interest in any case described by 28 U.S.C. § 455(b). I anticipate that such conflicts would most frequently arise in cases involving parties in which my wife or I have a "financial interest" as defined by 28 U.S.C. § 455(d)(4), or in which a person within the third degree of relationship to either of us is a party, officer, director, or trustee of a party; a lawyer; a material witness; or possesses an interest which could be materially affected by the outcome of the litigation. A potential conflict of interest would be cases in which my wife's firm, Barnes & Thornburg LLP, represents a party. Other potential conflicts of interest would be presented by an appeal of any decision I have made in the district court, or any appeals in cases which were pending in the Southern District of Indiana during my tenure as a judge in the district court. With respect to all other potential conflicts of interest which would be raised by the parties or which would be observed by me sua sponte during my consideration of appeals, I would address each on a case-by-case basis.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, would follow the procedures established by the Seventh Circuit Court of Appeals, including any automatic recusal system. I would maintain an up-to-date recusal list with the Clerk's office. Additionally, I would review the record in all cases assigned to me, including the disclosure-of-interests statement that is required by Seventh Circuit Rule 26.1, to make a case-by-case determination if any reason for recusal exists, as described above. In each instance in which recusal is sought or in which a potential disqualifying concern is recognized sua sponte, I would apply the requirements of 28 U.S.C. §§ 144 and 455 and consider any applicable provisions of the Code of Conduct for United States Judges and the related commentary and advisory opinions of the Judicial Conference Committee on Codes of Conduct and similar provisions of the American Bar Association Code of Judicial Conduct.

27. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of

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professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my employment with the United States Attorney's Office and as a judge, I have been prohibited from acting as a lawyer outside those capacities. While in private practice (from 1977 to 1984) I routinely accepted assignment of pro bono civil cases through the Indianapolis Bar Association and at the requests of individuals. I estimate that I spent on average 40 hours per year on such cases. From 1977 to 1979, I served as a part-time public defender in a criminal court in Marion County, Indiana, and accepted appointments in the federal court for several indigent criminal defendants. Although I was provided some compensation for this work, it was essentially nominal, and I considered that criminal defense work to be in large part a service to the courts and to the disadvantaged defendants and their families. I also consider my work as a state and federal prosecutor and my work as a judge to be of service to the disadvantaged.

I have also served (from 2002 through 2004) on the Indianapolis Bar Association Standing Pro Bono Committee and have worked within the district court and with the practicing bar to enhance our program to obtain volunteer counsel for indigent civil litigants pursuant to our Local Rule 4.6. When time has permitted, I have also worked with organizations to aid the disadvantaged, including serving as a mentor through the Big Brothers of Indianapolis program from 1978-80, and from 1987 until 1997 through the Wheeler Boys and Girls Club. I also worked in food service at the Cathedral Soup Kitchen on a monthly basis from 1984 to 1995.

28. **Selection Process:**

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On April 21, 2007, I interviewed with United States Senator Richard G. Lugar regarding my interest in being considered for a vacancy on the Seventh Circuit Court of Appeals. On May 16, 2007, I interviewed with Mr. Fred Fielding, White House Counsel, and two members of his staff. On May 17, 2007, I interviewed with Attorney General Alberto R. Gonzales and members of his staff. In late May 2007, I was notified that I had been approved for further consideration. I was contacted by staff of the Department of Justice regarding nomination paperwork. After completing that paperwork, my nomination was submitted to the United States Senate on July 17, 2007.

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b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

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Rev. 1/2007

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Tinder, John D	Seventh Circuit	07/18/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge - Nominee	[X] Nomination, Date 7/17/07 [ ] Initial [ ] Annual [ ] Final 5b. [ ] Amended Report	01/01/2006 to 07/18/2007
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
46 East Ohio Street, Room 304 Indianapolis, IN 46204	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of instructions.)*

[ ] NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Vice President	Indianapolis Bar Association
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of instructions.)*

[X] NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 11	Name of Person Reporting Tinder, John D	Date of Report 07/18/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

[X] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			
5.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

[ ] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2006	Barnes & Thornburg, Attorneys at Law (Partnership Share)
2.	2007	Barnes & Thornburg, Attorneys at Law (Partnership Share)
3.		
4.		
5.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

[ ] NONE *(No reportable reimbursements.)*

	SOURCE	DESCRIPTION
1.	Exempt	
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 3 of 11	Name of Person Reporting Tinder, John D	Date of Report 07/18/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

[ ] NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)*

[X] NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Tinder, John D	07/18/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. National City Bank Account	A	Interest			Exempt				
2. First Indiana Bank - IRA #1 (CD)	A	Interest	J	T					
3. Barnes & Thornburg Profit Sharing Plan		None	O	T					
4. -Vanguard Institutional Index Mutual Fund									
5. -Harbor Cap Apprec Mutual Fund									
6. -Fidelity Small Cap Stock Mutual Fund									
7. -William Blair Intl Gr I									
8. United Home Life Ins. Co. (Annuity)	A	Interest	K	T					
9. A.H. Belo Common Stock	A	Dividend	K	T					
10. Colgate Palmolive Common Stock	B	Dividend	K	T					
11. Northwestern Mutual Life Ins Co (Annuity)	B	Dividend	L	T					
12. -Franklin Templtn Intl Eq Mutual Fund									
13. -Balanced Mutual Fund									
14. -Index 500 Stock Mutual Fund									
15. -Mid Cap Growth Stock Mutual Fund(See Footnote #1)									
16. Treasury Notes	C	Interest	L	T					
17. Series EE Savings Bond Purchased 1992	B	Interest	K	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P2 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Tinder, John D	07/18/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-48 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Series EE Savings Bonds Purchased 1993	B	Interest	K	T	Exempt				
19. Series EE Savings Bonds Purchased 1994	B	Interest	K	T					
20. Vanguard - IRA #2	D	Dividend	N	T					
21. -Vanguard 500 Index Fund									
22. -Vanguard LT Treasury Fund Admiral Shares									
23. Vanguard - IRA #3	C	Dividend	M	T					
24. -Vanguard 500 Index Fund									
25. -Vanguard Telecommunications Services Fund									
26. Vanguard Brokerage Account #1									
27. -Vanguard 500 Index Fund	D	Dividend	N	T					
28. -Vanguard Allocation Fund	A	Dividend	J	T					
29. -Vanguard Target Retirement 2015-65%	A	Dividend	J	T					
30. -Vanguard Equity Income Fund	A	Dividend	J	T					
31. -Vanguard European Stock Index	A	Dividend	J	T					
32. -Vanguard REIT Index Fund Adm	A	Dividend	K	T					
33. -Vanguard Telecom Services Idx Adm	B	Dividend	M	T					
34. -Vanguard Value Index Fund	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
3. Value Method Codes (See Column C2)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 6 of 11	Name of Person Reporting Tinder, John D	Date of Report 07/18/2007

VII. INVESTMENTS and TRUSTS -- *Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. -Vanguard Windsor II Fund	A	Dividend	J	T	Exempt				
36. Vanguard Brokerage Account #2									
37. -Vanguard Health Care Fund	D	Dividend	L	T					
38. -Vanguard 500 Index Fund	A	Dividend	K	T					
39. -Vanguard Total Stock Mkt Idx	B	Dividend	L	T					
40. Starbucks Corp. Common Stock		None	K	T					
41. Old Mutual Tech & Comm Fd (Mutual Fund)		None							
42. CSX (Common Stock)	A	Dividend							
43. National Bank of Indpls. Accounts	E	Interest	N	T					
44. Prudent Bear Fund No Load	A	Dividend	K	T					
45. Merrill Lynch Account #1									
46. -ML Cash Management Account	A	Interest	J	T					
47. -Cisco Systems Inc		None							
48. -Clough GLBL Opptys	A	Dividend							
49. -Enhanced Equity Yield	A	Dividend							
50. -FDX	A	Dividend							
51. -Freeprt-McMran CPR&GLD B	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less P =$50,001 - $100,000	B =$1,001 - $2,500 O =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Tinder, John D	07/18/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B: (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g. buy, sell, redemption)	D: (2) Date Month - Day	D: (3) Value Code 2 (J-P)	D: (4) Gain Code 1 (A-H)	D: (5) Identity of buyer/seller (if private transaction)
52. -GE	A	Dividend			Exempt				
53. Ideare Inc		None							
54. -Ishares Dow Jones US Healthcare Sector Index	A	Dividend							
55. -Ishares FTSE Xinhua HK China 25 Index Fd	A	Dividend							
56. -Ishares MSCI Eafe Index Fund		None							
57. -Ishares MSCI Emerging Mkts Index Fund		None							
58. -Ishares Russell Midcap Index Fund		None							
59. -Ishares S&P Global 100 Index Fund	A	Dividend							
60. -Ishares Trust Dow Jones Select Divid Index Fd	A	Dividend							
61. -Medtronic Inc Com	A	Dividend							
62. -Monsato Co New Del Com	A	Dividend							
63. -Noble Corporation	A	Dividend							
64. -Powershares ETF Dynamic Biotech and Geno		None							
65. -Powershares ETF TR Aerospace and Defense	A	Dividend	J	T					
66. -Powershares ETF Tr Dynamic Ins Portfolio	A	Dividend	J	T					
67. -Powershares Listed Priv Equity Portfolio	A	Dividend	J	T					
68. -Powershares Tr Dynamic Lrg Cap Grwth	A	Dividend	J	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

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Name of Person Reporting	Date of Report
Tinder, John D	07/18/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Include those of the spouse and dependent children. See pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g. buy, sell, redemption)	D. (2) Date Month - Day	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
69. -Sirius Satellite Radio		None			Exempt				
70. -Verizon Communications	A	Dividend							
71. -Blackrock Global Horizons LP		None	K	T					
72. -Ishares MSCI Japan Index Fd		None	J	T					
73. -ML&Co ARN SX5E		None	J	T					
74. -ML&Co ARN GCIB		None	J	T					
75. -Zionsville In Cmnty Schs 0% Bonds		None	L	T					
76. Merrill Lynch Account #2 (See Footnote #2)									
77. -AES Corp		None							
78. -Nuveen Dividend Adv Muni Fund 2	A	Dividend							
79. -Ind. Fins. Auth. NCAA Bonds	A	Interest							
80. -Zionsville In Cmnty Schs 0% Bonds		None							
81. Northwestern Mutual Whole Life Ins	D	Dividends	L	T					
82. National Bank of Indianapolis - IRA (CD)	A	Interest	K	T					
83. National Bank of Indianapolis 561 - CD	D	Interest							
84. National Bank of Indianapolis 590 - CD	D	Interest							
85. National Bank of Indianapolis 310 - CD	C	Interest							

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
3. Value Method Codes (See Column C2)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	S =Assessment			
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 9 of 11	Name of Person Reporting Tinder, John D	Date of Report 07/18/2007

VII. INVESTMENTS and TRUSTS -- *Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
86. National Bank of Indianapolis 363 - CD	C	Interest			Exempt				
87. National Bank of Indianapolis 355 - CD		None	N	T					
88. National Bank of Indianapolis 050 - CD		None	N	T					
89. National Bank of Indianapolis 068 - CD		None	M	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting Tinder, John D	Date of Report 07/18/2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Footnote #1 (Sec VII, Item 15) Fund had a name change from Aggressive Growth Stock to Mid Cap Growth Stock.

Footnote #2 (Sec VII, Item 76) Merrill Lynch Account #2 was closed and the remaining assets were transfer into Merrill Lynch Account #1.

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Tinder, John D	Date of Report 07/18/2007

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature _____ Date 7/18/2007

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	1	563	882	Notes payable to banks-secured			
U.S. Government securities-add schedule		174	020	Notes payable to banks-unsecured			
Listed securities-add schedule		80	766	Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		430	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		145	000				
Cash value-life insurance		81	400				
Other assets itemize:	2	728	869				
See attached schedule							
				Total liabilities			0
				Net Worth	5	203	937
Total Assets	5	203	937	Total liabilities and net worth	5	203	937
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

47206.065

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Schedule of U.S. Government Securities	Value
Treasury Notes Mat. 12/31/07	$50,000.00
Treasury Notes Mat. 02/15/09	$15,000.00
Treasury Notes Mat. 12/31/11	$15,000.00
Series EE Bonds Mat. Nov. 2022	$33,672.00
Series EE Bonds Mat. Jan. 2023	$33,672.00
Series EE Bonds Mat. Jan. 2024	$26,676.00
Total of U.S. Government Securities	**$174,020.00**

Schedule of Listed Securities	Value
A.H. Belo Common Stock	$16,472.00
Starbucks Corp. Common Stock	$21,056.00
Colgate Palmolive Common Stock	$43,237.50
Total of Listed Securities	**$80,765.50**

Schedule of Real Estate	Value
Personal Residence	$430,000.00

Schedule of Other Assets	Value
Harbor Cap Apprec Mutual Fund	$242,231.83
Fidelity Small Cap Stock Mutual Fund	$275,591.90
William Blair Intl Gr I	$23,169.64
United Home Life Ins. Annuity	$16,358.15
Northwest Mutual Life Annuity Funds	
Franklin Tmpltn Intl Equity Fund	$16,156.68
Northwest Mutual Balanced Mutual Fund	$10,967.93
Northwest Mutual Index 500 Stock	$45,731.97
Northwest Mutual Aggressive Growth Index	$22,856.49
Vanguard Mutual Funds	
Vanguard Institutional Index Fund	$422,195.17
Vanguard 500 Index Admiral	$456,894.86
Vanguard LT Treasury Fund Admiral	$131,850.17
Vanguard 500 Index	$30,924.29
Vanguard Health Care Fund Investor Shares	$90,988.97
Vanguard Total Stock Market Index Fund	$97,504.18
Vanguard Value Index Fund Investor Shares	$10,827.56
Vanguard Equity Income Fund Investor	$10,798.74
Vanguard Windsor II	$11,159.59
Vanguard Asset Allocation Fund Investor	$5,346.97
Vanguard European Stock Index Fund	$11,464.62
Vanguard REIT Index	$22,568.55
Vanguard Target Retirement 2015 Fund	$5,284.50
Vanguard Telecommunication Index Fund Admiral Shares	$219,308.26
Thrift Saving Plan	$392,017.95
Prudent Bear Fund 286	$24,966.48
Zionsville In Comnty School Bonds	$75,870.00
Merrill Lynch & Company Funds	
Ishares MSCI Japan Index Fund	$5,840.00
ML&CO ARN DJ Euro Index	$7,049.00
ML&CO ARN GCIB Index	$6,965.00
Powershares EFT TR Aerospace and Defense Fund	$4,801.50
Powershares EFT TR Dynamic Insurance Portfolio Fund	$3,870.00
Powershares Listed Priv. Equity Fund	$3,623.75
Powershares TR Dynamic Lrg Cap Grwth	$8,163.00
Blackrock Global Horizon LP Series	$15,521.68
Total of Other Assets	**$2,728,869.38**

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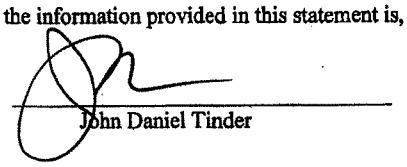
AFFIDAVIT

I, John Daniel Tinder, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

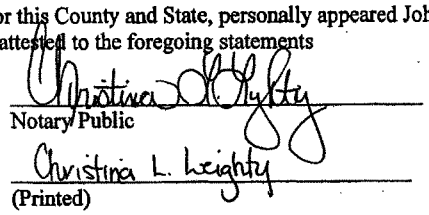
7/19/2007
(DATE)



John Daniel Tinder

Before me, a notary public, in and for this County and State, personally appeared John Daniel Tinder, and upon being duly sworn, attested to the foregoing statements

Hamilton
County of Residence



Notary Public

7/18/2014
Commission Expiration

Christina L. Leighty
(Printed)

Senator DURBIN. Thanks a lot, Judge. Appreciate your being here.

I'd now like to introduce Robert Dow as we change the name plates up here. With my own consent, I will enter into the record a statement from my colleague, Senator Barak Obama, in support of your nomination.

Before you sit down, I'll ask you to raise your right hand.

[Whereupon, the witness was duly sworn.]

Senator DURBIN. Let the record reflect that the nominee has answered in the affirmative.

Mr. Dow, welcome. You are now entitled to an opening statement and/or introduction of your family.

STATEMENT OF ROBERT M. DOW, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Mr. DOW. Thank you very much, Senator. I, first, want to thank you, sir, for chairing this hearing, and thank Senator Leahy and the other Committee Members for bringing this nomination to the Committee as quickly as you have.

I also want to thank Senator Obama for his support of my nomination, as I thank you for your support. Of course, I thank President Bush for having the confidence in me to nominate me for this position.

I have a lot of family members here today and I'd like to introduce them. My wife, Elizabeth, is in the second row there. She's holding our 4-year-old, Dulce, who I think is wiped out today.

Senator DURBIN. She was an honorary Senator earlier today. It does take its toll.

Mr. DOW. And she was delighted by that. That you for that as well, Senator.

My parents, Bob and Diane Dow, are also here on the second row. My two boys, Michael and William, who are 10 and 8, are in the first row in their Sunday best, and my other daughter, Claire, is in the second row. She's 5 years old. I thank you for the opportunity to introduce them.

Senator DURBIN. Thank you.

I'm pleased to join in this formal introduction of Robert Michael Dow, Jr. to the committee. Mr. Dow is a son of Joliet, Illinois, where he lives with his wife Elizabeth and four children, who have been introduced. He grew up in Joliet. He returned there after a few brief stops at Harvard, Yale, and Oxford, where he served as a Rhodes Scholar and played power forward on the Oxford varsity basketball team, which is something I didn't realize in our first interview, but now am suitably impressed.

He's earned an outstanding reputation for his legal skills and his commitment to pro bono work. He is a partner at one of Chicago's largest and most prestigious law firms, Mayer Brown. Earlier this year he was named one of the 21 leading lawyers in the United States in the field of telecom, broadcast, and satellite. He's been listed the past 2 years as an Illinois "Super Lawyer" by Super Lawyers Magazine in the field of appellate law. He's been listed in the "Best Lawyers in America" publication in the field of communications law.

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Robert Dow has received another award that I believe is equally noteworthy. In 2004, he received the annual pro bono service award from his law firm, a firm of 1,500 attorneys. I think his commitment to helping indigent clients will serve him well when he puts on a black robe and metes out justice.

Mr. Dow's nomination was recommended by the senior Republican member of the Illinois delegation in the U.S. House of Representatives, Dennis Hastert. I might add for the record that former Speaker Hastert and I have an agreement, on a bipartisan basis, to fill these nominations as they come in a cooperative manner, and it's worked very well. Illinois, in the 10 years I've been lucky enough to represent it, has really not gone very long without filling judicial vacancies.

Mr. Dow enjoys support of both sides of the aisle, as I mentioned earlier when I included the statement of support from my colleague, Senator Obama.

Roger Kiley, a friend of mine for many years and a partner at Mayer Brown, a former State court judge and former chief of staff to Chicago Mayor Richard Daley, said that Mr. Dow is "one of the brightest lawyers I've ever worked with, has no agendas, and treats people fairly." Another Mayer Brown partner and prominent Democrat, John Schmidt, said that Robert Dow is a "thoughtful, decent person with great temperament."

The former Illinois Solicitor General, Gary Feinerman, said that Mr. Dow is "one of the finest people I know—brilliant, courteous, patient, charitable, fair. I have no doubt he'll make an outstanding judge." Mr. Dow's nomination is a tribute to the bipartisan approach which we've used successfully in Illinois, and I'm glad to have him here today.

Let me just ask you, by way of opening, the question that I asked of Judge Tinder. Having dealt with judges in the past, as I'm sure you have, you know that judicial temperament is a big issue. This is a lifetime appointment. There are no give-backs on this. Once you're there, it takes an act of Congress, almost, to remove you. I wonder sometimes what impact that will have on the attitude and temperament of the person who becomes a judge. I would like your comments on the issue of temperament.

Mr. DOW. Thank you, Senator, for the opportunity to address that issue. I think that judicial temperament really has to be one of courtesy, one of dignity, and one of humility. District judges have an enormous plate and they are necessarily generalists. There is no way they can know everything, and I think they have to be humble about what they don't understand.

I think also for each litigant who comes in the courtroom and each lawyer who practices in the courtroom, for them, the most important case on the judge's docket is their case. I think it's important that judges give each case the individual attention to which it's entitled.

My own mentor is the judge that I clerked for, Judge Flaum. He's been a wonderful role model for me. If I'm fortunate enough to be confirmed to serve as District judge, I think watching the way he treats people—and he treats everybody exactly the same, and that's with courtesy, respect, and dignity, and I think that's appropriate for a judge.

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Senator DURBIN. I also asked Judge Tinder a question which I would ask you as well, and that is, if a person of limited means, poor, disadvantaged walks into a Federal courtroom, I'm sure it's a daunting experience. I've seen those courtrooms. They're pretty big and foreboding. They're going to look up on the bench and hope for the best.

What is it in your background, in your life experience, that would say to this person that you're not alone in this courtroom, you have someone who at least has a life experience that can identify with someone who doesn't have all the power and all the money?

Mr. DOW. Thank you, Senator. Also, I'm very pleased that you asked that question of me as well. As you alluded to, my background at Mayer Brown includes extensive involvement in pro bono cases. I've really made that a commitment the entire time that I've been at Mayer Brown. In that context, I've come in contact with individuals and not-for-profit corporations that really need legal help, and they otherwise couldn't afford the services of a firm like mine.

It's been a real privilege to represent these people in a whole variety of actions, from prisoners' rights cases where people didn't have access to medical care, or immigration cases where people have a fear of deportation, and even some smaller cases where someone was sued, and didn't understand the way to get out of the problem they had was to tender their case to their insurance carrier.

Even small things like that, people who don't have access to sophisticated lawyers and needed help, and it's been a real great opportunity for me to demonstrate, and also to reaffirm, the joy of being a lawyer and the joy of helping people. I think, if people are aware of that in my background, I'm confident they'll feel that they'll have a fair shake, if I were confirmed to this position.

Senator DURBIN. In the year 2000, you helped to write a brief in a high-profile Supreme Court case involving the question of whether it was a reasonable accommodation under the Americans With Disabilities Act to permit a disabled golfer to use a golf cart instead of having to walk.

You took the position on behalf of your client, the U.S. Golf Association, that Casey Martin, the disabled golfer, should not have a right to this accommodation. In your argument, you took a narrow view of the Americans With Disabilities Act. You lost that case by a vote of 7 to 2.

Only the two most conservative justices, Scalia and Thomas, accepted your reading of the ADA. The seven-person majority, which included Chief Justice Rehnquist, wrote: "It would be inconsistent with the literal text of the statute as well as its expansive purpose to read Title III's coverage...any less broadly."

I'd like to ask you if it is your general view that Federal civil rights statutes should be ready narrowly or expansively.

Mr. DOW. My general view on civil rights statutes is that they should be read according to the ways that people ordinarily interpret statutes. In that particular case, of course, I was representing a client as an advocate. The USGA is a long-term client of my firm. We represented the USGA in a Seventh Circuit case that was in

conflict with the Ninth Circuit case that Casey Martin was the plaintiff in.

In general, I don't really have any predispositions as a judge as to how statutes ought to be interpreted, except to follow the precedents. Of course, there will be precedent for a district judge in the Supreme Court in the Seventh Circuit, and otherwise to read the text of the statute in light of its structure, history, and the usual tools of interpretation.

Senator DURBIN. I only have one other question on that case. I don't know how much personal involvement you had in writing the brief that was submitted. But the interpretation of the ADA that was adopted by the Ninth Circuit, and ultimately affirmed by the Supreme Court, was described in the Golf Association brief as "radical". The word "radical" was used. The brief stated that if the Supreme Court ruled against the Golf Association position, "this case may prove to be a 'watershed event' that interjects the ADA into professional sports."

So I'd like to ask you to comment on those two characterizations, whether or not, after the Supreme Court ruling, you believed this was a radical ruling on their part, and whether in fact it did turn out to be a watershed event in professional sports.

Mr. DOW. Senator, I'm not sure whether I would have written that word into the brief or not. I was probably the low man on the totem pole in that case. As it turns out, the case certainly was not proven to be as we predicted in that brief, and our cottage industry of litigating golf cases ended with that case. So, no, I think that may have been writer's hyperbole, advocate's hyperbole.

Senator DURBIN. Thank goodness Senators never get involved in that.

[Laughter.]

Let me ask you about your own personal experience. From your questionnaire, it appears you've never had a jury trial or bench trial. Is that correct?

Mr. DOW. That's correct, sir.

Senator DURBIN. And have not taken a case to verdict or a judgment.

Mr. DOW. Yes, that's correct.

Senator DURBIN. So now you're going to be in a different position. You will be sitting as a trial judge in civil and criminal cases. How will you address this learning curve?

Mr. DOW. Well, Senator, I do appreciate the opportunity to address that issue. I think my experience as a civil litigator in complex matters is very diverse, and I've described some of the types of cases to you. Apart from actually picking a jury and standing up and trying the case, I think I've probably done everything that can be done with respect to complex civil litigation.

In criminal matters, I think some of the—as I've described, some of the pro bono cases I've been involved in, I have some experience, but less experience in that area. I think, in terms of making up the learning curve, I think what I'll need to do is what I've always done, which is to work extremely hard to get advice from people

who know more than I do, and essentially try to overcome the learning curve by outworking it.

Senator DURBIN. Anything you'd like to add in closing?

Mr. DOW. No, Senator, other than to thank you very much again for chairing this hearing and for your support of the nomination.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Robert Michael Dow, Jr.

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Northern District of Illinois

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: Mayer, Brown, Rowe & Maw LLP
   71 South Wacker Drive, Suite 4500
   Chicago, Illinois 60606

   Residence: Joliet, Illinois

4. **Birthplace**: State year and place of birth.

   1965; Madison, Wisconsin

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   I am married to Elizabeth Daley Hoskins Dow (Pre-marriage name: Elizabeth Daley Hoskins). She works as a contract lawyer for Bailey & Glasser (227 Capitol Street, Charleston, WV 25301) and June, Prodehl & Renzi (1861 Black Road, Joliet, IL 60435.) She also handles pro bono matters as appointed counsel in Will County, Illinois and teaches part-time at Joliet Junior College and the University of St. Francis. We have four dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Harvard Law School – attended 9/90 through 6/93; awarded Juris Doctorate (J.D.) degree *cum laude* in June 1993

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University of Oxford – attended 10/87 through 6/90 (in residence on Rhodes Scholarship); awarded Doctor of Philosophy (D. Phil.) degree in International Relations in May 1997; awarded Master of Philosophy (M. Phil.) degree in International Relations in June 1990

Yale University – attended 9/83 through 5/87; awarded Bachelor of Arts (B.A.) degree in History and Political Science in May 1987 *summa cum laude* with Distinction in Both Majors

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Employment:

1995 – Present
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, IL 60606
Partner in Litigation, Appellate and Supreme Court, and Telecommunications Practice Groups, 2002-present; Associate, 1995-2001

1993 - 1994
Honorable Joel M. Flaum
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, IL 60604
Law Clerk

1992, 1993
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, IL 60606
Summer Associate

Spring 1992
Harvard University
513 Pound Hall
1563 Massachusetts Avenue
Cambridge, MA 02138
Teaching Fellow

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1991, 1992
Jenner & Block
One IBM Plaza
Chicago, IL 60611

Jenner & Block
601 Thirteenth Street, NW
Washington, DC 20005
Summer Associate, 1991, 1992

1987 – 1990
The Dow Agency, Inc.
1429 Plainfield Road
Joliet, IL 60435
Summer Help

Summer 1988
United States Department of State
Bureau of European and Canadian Affairs
2201 C Street, NW
Washington, DC 20520
Work Study Intern, Bureau of European and Canadian Affairs

Other Affiliations:
Harvard Law Society of Illinois
c/o Lisa Johnson (Secretary)
Holland & Knight
131 S. Dearborn Street , 30th Floor
Chicago, IL 60603
Director, 2006-present

Appellate Lawyers Association of Illinois
321 South Plymouth Court
Chicago, IL 60604
Director 2000-02; Treasurer 2002-03; Secretary 2003-04; Vice President 2004-05; President 2005-06

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

   None

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

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Chambers Global Guide to the World's Leading Lawyers for Business – listed as one of 21 lawyers in the U.S. as Band 1 or Band 2 lawyers in the field of Telecom, Broadcast and Satellite, 2007

Chambers USA Guide to America's Leading Business Lawyers – listed as a "leading lawyer" in the field of Communications/Technology or Telecom, Broadcast and Satellite, 2003, 2004, 2005, 2006, 2007

Illinois Super Lawyer – listed in 2006 and 2007 rankings in the field of Appellate Law

Best Lawyers in America – listed in 2006 and 2007 editions in the field of Communications Law

Mayer, Brown, Rowe & Maw LLP Pro Bono Service Award – awarded 2004 for supervision of Firm's associates in Seventh Circuit appeals

Leadership Greater Chicago – Fellow, 2003-04

Harvard Law School – received J.D. degree *cum laude*, 1993

Derek C. Bok Center Award for Excellence in Undergraduate Teaching – awarded for work as Teaching Fellow for Professor Roger Fisher's course on "Coping with International Conflict," Spring Semester 1992

Rhodes Scholarship – elected from Illinois, 1987

David M. Chantler Prize – awarded to the Yale College senior "who best exemplifies the qualities of courage, strength of character, and high moral purpose," May 1987

Yale College – received B.A. degree in History and Political Science *summa cum laude*, with Distinction in Both Majors, 1987

Phi Beta Kappa – elected 1986

Valedictorian, Joliet Catholic High School, Class of 1983

Hillman of the Year – highest award to graduating senior, Joliet Catholic High School, 1983

Joliet Catholic Academy Alumni Achievement Award – awarded 2002

Joliet Catholic High School Alumnus of the Year Award – awarded 1987

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10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Appellate Lawyers Association of Illinois
President, 2005-06; Vice President, 2004-05l; Secretary, 2003-04; Treasurer, 2002-03; Board Member, 2000-02

Seventh Circuit Bar Association

American Bar Association

Chicago Bar Association

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

State of Illinois, admitted November 4, 1993

There have been no lapses in my membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Illinois State Courts, admitted November 4, 1993

Supreme Court of the United States, admitted August 8, 1997

United States Court of Appeals for the Seventh Circuit, admitted February 8, 1994

United States Court of Appeals for the Sixth Circuit, admitted September 10, 1996

United States Court of Appeals for the Fourth Circuit, admitted July 29, 1997

United States Court of Appeals for the Ninth Circuit, admitted November 18, 1997

United States Court of Appeals for the Fifth Circuit, admitted September 13, 2000 for five year period; lapsed as of September 13, 2005 per 5th Cir. R. 46.1 (I did not apply for readmission because I no longer have any cases pending in the Fifth Circuit)

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United States Court of Appeals for the Eleventh Circuit, admitted January 19, 2001 for five year period; inactive as of February 1, 2006 and lapsed as of February 1, 2007 per 11th Cir. R. 46.1 (I did not apply for renewal/readmission because I no longer have any cases pending in the Eleventh Circuit)

United States Court of Appeals for the Eighth Circuit, admitted April 3, 2007

United States Court of Appeals for the Tenth Circuit, (application for admission pending as of June 21, 2007)

United States District Court for the Northern District of Illinois, admitted December 16, 1993

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Cathedral of St. Raymond Parish, 1997-present

Harvard Law Society of Illinois, 2004-present; Director 2006-present

Oxford-Cambridge Boat Race Dinner Society, 1987-present

Yale Club of Chicago, 2005-present

Yale Alumni Schools Committee, 1997-present

Association of American Rhodes Scholars, 1987-present

Joliet Catholic Academy Alumni Association, 1983-present

Cathedral of St. Raymond Men's Club, 2006-present

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

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None of the organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

"Invalidation of Ohio Tort Reform Legislation," 2000 *International Journal of Insurance Law* 85-88 (January 2000) (with J.E. Muench).

"Arguing for Changes in the Law," 25(2) *Litigation* 37-41, 67-68 (Winter 1999) (with J.C. Schroeder) – reprinted in Priscilla Anne Schwab, ed., THE LITIGATION MANUAL: FIRST SUPPLEMENT 912-26 (ABA 2007).

When Judicial Activism Trumps Tort Reform: the Illinois Experience, Washington Legal Foundation, Critical Legal Issues, Working Paper Series No. 85 (June 1998) (with J.E. Muench).

"State High Court Should Uphold Illinois Tort Reform Law," Washington Legal Foundation, Legal Backgrounder, Vol. 12, No. 12 (August 8, 1997) (with J.E. Muench).

"Linking Trade Policy to Free Emigration: The Jackson-Vanik Amendment," 4 *Harvard Human Rights Journal* 128-138 (Spring 1991).

"Senator Henry M. Jackson and U.S.-Soviet Détente," University of Oxford D. Phil. Thesis, submitted January 1996, available at Bodleian Library, Oxford.

Senator Henry M. Jackson and U.S.-Soviet Détente," University of Oxford M. Phil. Thesis, submitted May 1989, available at Bodleian Library, Oxford.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

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c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

"Effective Brief Writing" – Appellate Lawyers Association CLE Seminar, May 11, 2007, Chicago: this was a presentation on effective brief writing techniques for an appellate practice seminar.

"Tips and Opportunities for Handling Your First Appeal" – Seventh Circuit Bar Association Annual Meeting, May 24, 2006, Chicago: this was a panel discussion targeted at the younger lawyers in the Seventh Circuit Bar Association. We discussed general appellate practice tips and the process for requesting appointment to handle pro bono cases as appointed counsel.

"Effective Brief Writing" – Chicago Bar Association/Appellate Lawyers Association Seminar, April 27, 2005, Chicago: this was a presentation on effective brief writing techniques for a "nuts and bolts" appellate practice seminar.

"Preemption Law Primer: Past, Present, Future" – SBC Legal Conference, March 9, 2005, San Antonio: this was a presentation to in-house lawyers at SBC that focused on preemption issues relating to the telecommunications business.

"Trends in the Supreme Court's Recent Jurisprudence in Cases With a Significant International Dimension" – CLE Seminar for Caterpillar, Inc., September 20, 2004, Peoria: this was a presentation to all of Caterpillar's in-house lawyers worldwide that focused primarily on cases of interest to the business community from the Supreme Court's 2003-04 Term.

"Effective Brief Writing" – Illinois State Bar Association/Appellate Lawyers Association Seminar, February 18, 2002, Bloomington, Illinois: this was a legal education presentation targeted primarily at more junior lawyers on brief writing techniques. I did not speak from a prepared text and do not have a copy of the written notes from which I spoke.

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"Panel Discussion on Challenges to Tort Reform Legislation" – American Legislative Exchange Council, October 1999, Washington, DC: on the basis of my work on the Illinois Supreme Court case in which the Illinois tort reform legislation was invalidated, I was asked to participate in a panel discussion. My co-panelists were Michigan Supreme Court Justice Clifford Taylor and Illinois State Senator Kirk Dillard. I did not speak from a prepared text and do not have a copy of any written notes from that panel discussion.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I was interviewed by several Illinois and Connecticut newspapers after I was awarded the Rhodes Scholarship in December 1986. I do not have any copies of clips or transcripts of those interviews.

I was interviewed by the Chicago Daily Law Bulletin and the Joliet Herald News in June 2005 when I became President of the Appellate Lawyers Association of Illinois.

I was interviewed in late 2005 in connection with the Chicago Lawyer magazine's naming of Judge Joel Flaum as its Lawyer of the Year for 2005.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held a judicial office.

15. **Citations**: If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

b. a list of cases in which certiorari has been requested or granted;

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

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f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

17. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Republican Precinct Committeeman, Troy Township, IL - I was appointed on the recommendation of U.S. Rep. George O'Brien, 1985; Elected in primary election, March 1986; and did not run again in March 1988 because of overseas residence

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

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On a volunteer basis, I drafted the Code of Ethics that the Illinois Republican Central Committee adopted in 2005.

18. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to Judge Joel Flaum, United States Circuit Judge for the Seventh Circuit, from September 1993 to September 1994.

ii. whether you practiced alone, and if so, the addresses and dates;

I never have had a solo practice.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

I have worked at Mayer, Brown, Rowe & Maw LLP (formerly Mayer, Brown & Platt) since April 1995. I was an associate from April 1995 through December 2001. I became a partner on January 1, 2002. Our offices currently are located at 71 South Wacker Drive, Chicago, Illinois 60606. Prior to July 2005, our offices were located at 190 South LaSalle Street, Chicago, Illinois 60603. I was a summer associate at Mayer Brown from June 1992 through August 1992 and June 1993 through August 1993.

I worked as a summer associate at Jenner & Block in Washington, DC from June 1991 through August 1991 and at Jenner & Block in Chicago in August 1992. Jenner's main office is located at One IBM Plaza, Chicago, Illinois 60611.

I worked as an unpaid volunteer at the U.S. Attorney's Office in Boston from January to May 1992 as part of a clinical course called "Government Lawyer" at Harvard Law School. The U.S. Attorney's Office at that time was located in the McCormick Post Office and Court House, but I believe it is now located in the new Moakley U.S. Courthouse, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02210.

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b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

My law practice has consisted principally of advising large corporations on trial and appellate litigation matters. I have participated in matters at all levels of the state and federal courts and in state administrative agencies. My practice has involved a great deal of writing and strategizing on behalf of my clients. Early in my career I devoted a large percentage of my time to mass tort and evidentiary issues on behalf of Dow Chemical in the breast implant litigation. Since 1998, I have spent more than half of my time working on telecommunications litigation on behalf of Ameritech, SBC, BellSouth, and AT&T.

ii. your typical clients and the areas, if any, in which you have specialized.

My typical clients are Fortune 500 companies, including AT&T, SBC, Ameritech, BellSouth, Dow Chemical, and General Motors. I also have represented not-for-profit entities, often as amicus counsel in appellate proceedings. For example, I have represented the United States Golf Association and the Illinois Civil Justice League. I currently represent a consortium of welding rod manufacturers, including Lincoln Electric Company, in a federal Multidistrict Litigation proceeding.

My areas of specialization include telecommunications, state and federal constitutional law, jurisdiction, civil procedure, preemption, mass tort and products liability, evidence (especially the admissibility of expert testimony), and class actions.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Almost 100% of my practice has been in litigation. I have appeared in court occasionally, most often to argue an appeal or a motion in a trial court. I have appeared in federal district court in the Northern District of Illinois and in the Circuit Courts of Cook and Madison Counties in Illinois. I also have appeared and argued appeals in the Illinois Appellate Court for the First, Third, and Fourth Districts, the United States Courts of Appeals for the Sixth and Seventh Circuits, and the Illinois Supreme Court.

i. Indicate the percentage of your practice in:
   1. federal courts: 60%
   2. state courts of record: 35%
   3. other courts. 5%

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ii. Indicate the percentage of your practice in:
1. civil proceedings: 95%
2. criminal proceedings. 5%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not tried any cases to verdict or judgment.

i. What percentage of these trials were:
1. jury;
2. non-jury.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have been involved in a substantial number of matters in the Supreme Court of the United States. I have written substantial parts of numerous petitions for writs of certiorari, briefs in opposition, merits briefs, and amicus briefs.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003), cert. denied, 540 U.S. 1142 (2004): this was a preemption case in which I was the principal brief writer and oral advocate in the Seventh Circuit. The question was whether the federal Telecommunications Act of 1996 preempted certain obligations that the Public Service Commission of Wisconsin imposed on my client, Wisconsin Bell. A divided court of appeals (Judges Posner and Easterbrook in the majority, Judge Cudahy in dissent) ruled in favor of my client, finding the Commission's order preempted. MCI/WorldCom filed a petition for certiorari. I was the principal drafter of the brief in opposition. The Supreme Court denied the petition in January 2004.

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Co-counsel was my partner, John Muench, Mayer, Brown, Rowe & Maw LLP 71 South Wacker Drive Chicago, IL 60606 (312) 701-7059. Opposing counsel were John Harrington and John Hamill of Jenner & Block 330 North Wabash Avenue, Chicago, IL 60611 (312) 222-9350 (for MCI) and Michael Varda, 610 N. Whitney Way, Madison, WI 53705 (608) 267-3591 (for the Wisconsin Commission).

2. *Cult Awareness Network v. Church of Scientology*, 177 Ill. 2d 267 (1997), cert. denied, 523 U.S. 1020 (1998): this was a malicious prosecution case which our firm handled pro bono. Our client, CAN, was a not-for-profit organization that sued the Church of Scientology for malicious prosecution after the Church had initiated dozens of lawsuits, allegedly for the purpose of putting CAN out of business. The trial and appellate courts dismissed the lawsuits based on the then-existing law of malicious prosecution. We petitioned for leave to appeal asking the Supreme Court of Illinois to change the law and adopt the Restatement position on the elements of the tort. I briefed the case and presented oral argument in the Supreme Court. The Court unanimously adopted our position. The Church of Scientology petitioned for certiorari. I wrote the brief in opposition. The Supreme Court denied the petition.

   Co-counsel were my Mayer Brown colleagues Jim Schroeder and Craig Woods at Mayer, Brown, Rowe & Maw LLP 71 South Wacker Drive Chicago, IL 60606 (312) 701-7964 and (312) 701-8536 and John Beal, 53 West Jackson Blvd., Suite 1108, Chicago, IL 60604 (312) 408-2766. Opposing counsel was Eric Lieberman of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, 740 Broadway, 5th Floor, New York, NY 10003 (212) 254-1111.

3. *MCIMetro Access v. Illinois Commerce Comm'n*, No. 3-99-0961 (Ill. App. 3d Dist. Mar. 17, 2005): this was a contract construction case that involved issues of federal law and principles of state administrative law. The principal question was whether MCI was bound by the terms of its federal interconnection agreements with Illinois Bell or whether MCI could take services from state tariffs at its election. I handled the brief writing and oral argument on appeal in the Third District Appellate Court before Justices Holdridge, Lytton, and Slater. The court unanimously ruled in favor of my client, Illinois Bell, upholding the Illinois Commerce Commission's construction of the parties' agreement.

   Opposing counsel was John Harrington at Jenner & Block, 330 North Wabash Avenue, Chicago, IL 60611 (312) 222-9350. Counsel for the Illinois Commerce Commission was John Kelliher, Special Assistant Attorney General, 160 North LaSalle Street, C-800, Chicago, IL 60601 (312) 793-2877.

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4. *Best v. Taylor Machine Works*, 689 N.E.2d 1057 (Ill. 1997): this was the major litigation over the constitutionality of the 1995 Illinois tort reform litigation. We were retained by the Illinois Civil Justice League to write amicus briefs defending the constitutionality of the statute. I was the principal drafter or the League's brief, which touched primarily on separation of powers issues and arguments under some fairly obscure provisions of the Illinois Constitution. The League's position was defeated and the legislation was invalidated in its entirety.

   Co-counsel for the amicus was my partner, John Muench, Mayer, Brown, Rowe & Maw LLP 71 South Wacker Drive Chicago, IL 60606 (312) 701-7059. Lead counsel for the plaintiff was Professor Laurence Tribe of Harvard Law School, 1563 Massachusetts Avenue, Hauser 420, Cambridge, MA 02138. Lead counsel for defendants were Richard Willard, Steptoe & Johnson, 1330 Connecticut Avenue, NW, Washington, DC 20036 (202) 429-6263 and Karen Kendall of Heyl Royster, Bank One Building, 124 SW Adams, Suite 600, Peoria, IL 61602 (309) 676-0400. Lead counsel for the Illinois Attorney General was then Assistant Attorney General (now US Bankruptcy Judge) Ben Goldgar, Dirksen US Courthouse, 219 South Dearborn Street, Suite 613, Chicago, IL 60604 (312) 435-5642.

5. *BellSouth Telecommunications, Inc. v. City of Memphis*, 160 S.W.3d 901 (Tenn. App. 2004), appeal denied (Jan. 04, 2005): this case involved the legality of a 5% gross revenue charge imposed by the City of Memphis on our client, BellSouth. I was the principal drafter of BellSouth's briefs from the trial court all the way through the Court of Appeals and the Supreme Court. The trial court ruled in favor of the City, but the Court of Appeals (Judges Crawford, Farmer, and Kirby) reversed in a unanimous decision, holding that state law preempted the City's ordinance that imposed the fee. The City then sought leave to appeal to the Tennessee Supreme Court, but that petition was denied.

   Co-counsel were my partner, John Muench, Mayer, Brown, Rowe & Maw LLP 71 South Wacker Drive Chicago, IL 60606 (312) 701-7059, Dorian Denburg, BellSouth Corporation, 1155 Peachtree, Atlanta, GA 30309 (404) 335-0737, and Earle Schwarz and Louis Allen of Glankler Brown PLLC, One Commerce Square, Suite 1700, Memphis, TN 38103 (901) 576-1844. Opposing counsel were Robert Spence, SpenceWalk LLC, One Commerce Square, Memphis, TN 38103 (901) 312-9160 and Allen Wade, Law Offices of Allen J. Wade PLLC, 119 South Main Street, Suite 700, Memphis, TN 38103 (901) 322-8005.

6. *Hartford Fire Ins. Co. v. Whitehall Convalescent & Nursing Home*, 321 Ill. App. 3d 879 (1st Dist.), appeal denied, 195 Ill.2d 755 (2001): this was an insurance coverage action which I handled for briefing and argument in

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both the trial and appellate courts. The trial court (Judge John Madden) held that the insurer did not owe a duty to defend. The appellate court reversed, holding that both a duty to defend and indemnify was owed in an opinion by Justice Patrick Quinn, joined by Justices Mary Jane Theis and Alan Greiman. The insurer petitioned for leave to appeal, which the Supreme Court denied. On remand, the trial court entered judgment for our client, Whitehall Nursing Home. The insurer again appealed, but the case settled on terms very favorable to our client just minutes before the oral argument was to begin in the Appellate Court.

Co-counsel were Alan Martin and Mike Olsen, Mayer, Brown, Rowe & Maw LLP 71 South Wacker Drive Chicago, IL 60606 (312) 701-7266 and (312) 701-7120. Opposing counsel were Patrick Morris and Tom Fegan at Johnson & Bell, 33 West Monroe Street, Suite 2700, Chicago, IL 60603 (312) 372-0770.

7. *Adams v. Northern Illinois Gas Co.*, 333 Ill. App. 3d 215 (1st Dist. 2002), aff'd, 211 Ill. 2d 32 (2004): in this case I represented Northern Illinois Gas Company in defending a lawsuit brought by the estate of an individual who was killed in a gas explosion. The issues on appeal were whether the gas company has a duty to warn of a danger associated with an appliance connector and whether the company's filed tariff abrogated any such duty that may exist. The trial court granted summary judgment for the gas company. The Appellate Court affirmed in its initial opinion, but reversed on rehearing. The Supreme Court allowed the petition for appeal and, in a 4-3 decision, affirmed the Appellate Court's finding that the company owed a duty to warn and that its tariff did not abrogate that duty. I wrote the gas company's briefs in the Appellate Court and the Supreme Court. The Appellate Court panel consisted of Justices Cousins, McNulty, and Tully. The Supreme Court opinion was written by Justice Freeman, joined by Chief Justice McMorrow and Justices Kilbride and Rarick. The dissenting opinion was written by Justice Garman, joined by Justices Thomas and Fitzgerald.

Co-counsel were George Tzanetopoulos, Mayer, Brown, Rowe & Maw LLP, 71 South Wacker Drive, Chicago, IL 60606 (312) 701-7026 and Gino DiVito of Tabet, DiVito & Rothstein LLP, The Rookery Building, 209 South LaSalle Street, 7th Floor, Chicago, IL 60603 (312) 762-9460. Opposing counsel were Tom Rakoski, Connelly, Roberts & McGivney LLP, One North Franklin Street, Suite 1200, Chicago, IL 60606 (312) 251-9600 and William Martin, Hilfman, Fogel, Martin & Barr, P.C., 33 North Dearborn Street, Suite 1700, Chicago, IL 60602 (312) 236-2321.

8. *Illinois Public Telephone Association v. Illinois Commerce Commission*, No. 1-04-0225 (Ill. App. 1st Dist. Nov. 23, 2005), cert. denied, 127 S. Ct. 1254 (2006): in this case I represented Illinois Bell (AT&T Illinois) in

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defending against a challenge to an order of the Illinois Commerce Commission barring refunds sought by payphone providers in connection with alleged violations of federal law. The Commission concluded, and the Appellate Court agreed, that the payphone providers' request for refunds was barred by the filed rate doctrine. The providers filed a cert. petition, which the Supreme Court denied. I participated in the briefing in the Appellate Court and presented the oral argument. I also prepared the brief in opposition to the cert. petition. The Appellate Court decision was written by Justice Sheila O'Brien, joined by Justices Michael Gallagher and Scott Neville.

Opposing counsel was Michael Ward, 1608 Barkley Blvd., Buffalo Grove, IL 60009 (847) 243-3100. Co-counsel were John Rooney, Sonnenschein, 233 S. Wacker Drive, 7800 Sears Tower, Chicago, IL 60606 (312) 876-8925 (on behalf of Verizon) and Matthew Harvey, 160 North LaSalle Street, C-800, Chicago, IL 60601 (312) 793-2877 on behalf of the Illinois Commerce Commission.

9. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457 (1999): this case presented questions of contract interpretation in a construction dispute between our client, Teachers Realty, and a contractor that had submitted change orders and relied on extrinsic evidence in rejecting our view of the proper interpretation of the obligations under the contract. The Supreme Court ruled unanimously in our client's favor, reaffirming the "four corners" rule in Illinois where, as in our case, the contract at issue contains an integration clause. I handled the briefing and argument in the Supreme Court.

Co-counsel were Phil Reed and Christine Kexel from Mayer Brown Mayer, Brown, Rowe & Maw LLP 71 South Wacker Drive Chicago, IL 60606 (312) 701-7361. Opposing counsel were Don O'Brien and Mike Gilman of O'Brien, O'Rourke & Hagan, 10 South LaSalle Street, Suite 2900, Chicago, IL 60603 (312) 739-3500.

10. *Olinger v. USGA*, 205 F.3d 1001 (7th Cir. 2000), and *Martin v. PGA Tour*, 531 U.S. 1049 (2001): I was a principal brief writer for the United States Golf Association in cases raising the issue of whether the USGA was required under the Americans with Disabilities Act to permit the use of golf carts in its competitions. Our client's position prevailed before a unanimous panel of the Seventh Circuit (opinion by Judge Evans, joined by Judges Rovner and Kanne). The Ninth Circuit, however, reached a contrary result in a similar case involving the PGA Tour. The Supreme Court granted certiorari to resolve the conflict. I was the principal drafter of the USGA's amicus brief in the Supreme Court. The Court rejected our position by a 7-to-2 vote.

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Co-counsel in the Seventh Circuit were my Mayer Brown colleagues Lee Abrams (who argued the case in the Seventh Circuit) and Jim Schroeder, Mayer, Brown, Rowe & Maw LLP 71 South Wacker Drive Chicago, IL 60606 (312) 701-7083 and 701-7964. Opposing counsel in the Seventh Circuit was John Hamilton, Hamilton Law Firm, 300 N. Michigan Street, #454, South Bend, IN 46601 (574) 289-9987.

20. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the litigation matters listed above, I have been involved in brief writing and strategy on expert opinion testimony and other evidentiary issues on behalf of the welding rod industry in a federal Multidistrict Litigation proceeding in the Northern District of Ohio, as well as in state court welding rod cases in New York, Illinois, and Mississippi. These matters continue my long-standing interest in rules of evidence and the admissibility of expert testimony that I developed working on the breast implant litigation on behalf of Dow Chemical Company, drafting an amicus brief in one of the Supreme Court "trilogy" of expert evidence cases, *General Electric v. Joiner*, 522 U.S. 136 (1997), and now writing briefs and crafting strategy in the welding rod cases.

My other principal legal activity for paying clients at this time is the building of a telecommunications practice representing AT&T. Currently I have matters pending for AT&T in federal district courts in Illinois, Wisconsin, Idaho, South Dakota, and Wyoming, in state courts in Oregon and Washington, in state public utility commissions in Idaho, Oregon, and Washington, and in the Eighth and Tenth Circuits.

Apart from work on behalf of clients, I have been heavily involved in the Appellate Lawyers Association of Illinois for nearly a decade, and during that time I have served as a director and in every officer position culminating in a year as President of the organization. In connection with my ALA activities, I have worked closely with many judges and justices across the state, including my predecessors as ALA President Fourth District Justice Jim Knecht and retired First District Justice Gino DiVito and my successor as ALA President First District Justice Mary Jane Theis, on a wide range of programs such as continuing legal education seminars, roundtable discussions, moot courts, and other matters of service to the Bench and Bar.

21. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

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While I was in law school, I was a Teaching Fellow for a course called "Coping With International Conflict" that was cross-listed at Harvard College, Harvard Law School, the Kennedy School of Government, and the Fletcher School of Law and Diplomacy. Professor Roger Fisher was the head instructor for the course. The course mixed international relations and negotiation theory. I taught in the Spring Term 1992 and received the Derek Bok Center Certificate for Excellence in Undergraduate Teaching on the basis of high course evaluation scores from my students.

22. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Upon my departure from Mayer Brown, I will receive the return of my capital contributions to the Firm. I will also have taxable deferred income. I will have no remaining deferred income or future benefits from the Firm. I will retain the accumulated amounts in my defined 401K benefit plan and will rollover the accumulated amounts in the Firm's Cash Balance Retirement Plan. I will be paid my parts income for 2007 on a pro rata basis up to the date of my departure from the Firm. I have no deferred income or future benefits from any other source.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue outside employment during my service with the court.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

25. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

    a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the

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position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Apart from family, close personal friends, and spouse's employers, I do not anticipate many potential conflicts of interest on the basis of my prior employment and our financial arrangements. We own only a couple of small bank stocks and otherwise have our investments in large funds. Given my long tenure at Mayer Brown and the concentration of my practice in recent years for AT&T, these are likely to present potential conflicts-of-interest matters during my initial service on the court. In addition, depending on the circumstances, I could conceive of matters involving certain issues or parties (*i.e.*, former clients) that might pose conflicts of interest based on my prior work or personal contacts.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Drawing on my experience clerking for Judge Flaum and in consultation with Judge Flaum and other judges whom I know and deeply respect, I would put in place strict procedures to avoid even the slightest appearance of impropriety or unfairness. In all cases, I will follow the Code of Conduct for United States Judges.

27. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Throughout my career at Mayer Brown, I have been a major contributor to the firm's pro bono program.

Early in my career, I worked on a pro bono basis on the *Cult Awareness* case mentioned above, which required several hundred hours of my time over the course of three years as the case proceeded from the Circuit Court of Cook County to the Supreme Courts of Illinois and the United States. Early in my career, I also volunteered to handle a criminal appeal in the First District Appellate Court, *People v. Willis*, when the First District requested assistance to clear a backlog of pending appeals. That case was affirmed without argument.

Since becoming a senior associate and partner, my principal pro bono involvement has been in connection with the Firm's Seventh Circuit project, in which we encourage our younger litigators to handle a Seventh Circuit appeal early in their careers. I have been the principal supervising partner on these appeals for five years. During that time, I have spent several hundred hours reviewing and editing briefs, holding moot courts, and advising our younger lawyers and their clients on Seventh Circuit practice and procedure. In the process, I have been involved in many of the kinds of cases that are the grist of the mill for federal district courts and courts of appeals – for example,

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Section 1983 suits, habeas corpus matters, and immigration issues. Our track record of success has been surprisingly good. Most of all, as I constantly remind the younger lawyers, we are assisting the Court and the development of the law, regardless of the results in particular cases. In one recent immigration matter, I was the principal brief writer in the Seventh Circuit, including with respect to a petition for rehearing en banc, and in the Supreme Court, in which our client's petition for certiorari is pending. I have spent well over 100 hours on that case in the past eighteen months, in addition to the dozens of hours that I have spent supervising other appeals. In connection with my work on the Seventh Circuit project, I received the Firm's annual pro bono award in 2004.

28. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted a written application to Speaker Hastert's office in May 2006. I interviewed at the Capitol with Speaker Hastert and other members of the Illinois Republican Congressional delegation on July 25, 2006. It is my understanding that the delegation, through Congressman Hastert, recommends candidates for nomination to the federal courts in Illinois.

In December 2006, I was advised that my name had been sent to the White House by Congressman Hastert. On January 8, 2007, I interviewed with four people in Deputy White House Counsel William Kelley's office, which included members of his staff and staff from the Department of Justice. In May 2007, I had telephone conversations with staff from the White House Counsel's Office and also with staff from the Department of Justice concerning paperwork that I would need to complete. I have subsequently had conversations with DOJ staff concerning the paperwork. In mid-July 2007 I was informed by the White House Counsel's Office me that my nomination would be submitted that week. My nomination was submitted to the Senate Judiciary Committee on July 18, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

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AO-10 (WP)
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FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Dow, Jr., Robert M.	U.S. District Court, Northern District of Illinois	July 19, 2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge Nominee	**5. Report Type (check appropriate type)** _x__ Nomination, Date 7/18/07 ___ Initial ___ Annual ___ Final	**6. Reporting Period** 1/1/06 to 6/30/07
7. Chambers or Office Address 71 South Wacker Drive Chicago, IL 60606	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	**NONE** (No reportable positions.)	
1	Partner	Mayer, Brown, Rowe & Maw LLP
2	President	Appellate Lawyers Association of Illinois
3	Director	Harvard Law Society of Illinois

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
☐	**NONE** (No reportable agreements.)	
1	2007	Mayer, Brown, Rowe & Maw Partnership Capital Account – amount net of loan to be returned upon resignation from partnership and prior to any service as a judge
2	2007	Mayer, Brown, Rowe & Maw Cash Balance Plan – amount to be returned upon resignation from partnership and prior to any service as a judge – retirement plan to be rolled over into private retirement account

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME
A.	**Filer's Non-Investment Income**		
☐	**NONE** (No reportable non-investment income.)		
1	2005	Mayer, Brown, Rowe & Maw LLP	$ 461,852
	2006	Mayer, Brown, Rowe & Maw LLP	$ 529,133
3	2007	Mayer, Brown, Rowe & Maw LLP	$ 339,668
B.	**Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)**		
☐	**NONE** (No reportable non-investment income.)		
1	2006	Bailey & Glasser LLP – contract legal work; Joliet Junior College – teaching salary	
2	2007	Bailey & Glasser LLP – contract legal work; June, Prodehl & Renzi LLP – contract legal work; Joliet Junior College – teaching salary	

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Robert M. Dow, Jr.	July 19, 2007

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

☐ **NONE** (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1		EXEMPT
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

☐ **NONE** (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1		EXEMPT	$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

☐ **NONE** (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE*
1	Northern Trust Bank	Equity line of credit	L
2			
3			
4			
5			

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Robert M. Dow, Jr.	July 19, 2007

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

☐	**NONE** (No reportable income,									
1	Northern Trust Bank accounts	A	Interest	K	T	Exempt				
2	Northern Trust Bank IRA (CD)	A	Interest	J	T					
3	Bank of Oklahoma 401K									
4	– Fidelity Asset Manager 50% (FASMX)		None	M	T					
5	– Dodge & Cox Stock (DODGX)		None	M	T					
6	– Cohen & Steers Inst. Realty (CSRIX)		None	L	T					
7	Harris Bank accounts	A	Interest	J	T					
8	GCG Mutual Fund									
9	– American Funds Euro Pacific Growth		None	J	T					
10	– American Funds Fundamental Investors		None	J	T					
11	– American Funds Small Cap World Fund		None	J	T					
12	– American Funds Bond Fund of America		None	J	T					
13	– American Funds Growth Fund of America		None	J	T					
14	GCG 529 Plan #1									
15	– EuroPacific Growth Fund 529A		None	J	T					
16	– American Funds New Economy Fund		None	J	T					

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Robert M. Dow, Jr.	July 19, 2007

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

☐	**NONE** (No reportable income, assets, or transactions)									
17	GCG 529 Plan #2									
18	– American Funds Capital World G/I 529A		None	J	T					
19	– American Funds Growth Fund of America 529A		None	J	T					
20	GCG 529 Plan #3									
21	– New Perspective Fund 529A		None	J	T					
22	– American Funds Fundamental Investors 529A		None	J	T					
23	Podesta HSA Account									
24	– I Shares Dow Jones Select Dividend Index Fund		None	J	T					
25	– I Shares TR S&P 500 Index Fund		None	J	T					
26	First Community Bank Common Stock		None	J	T					
27	Sauk Valley Community Bank Common Stock	A	Dividend	J	T					
28	MSJI, Inc. Common Stock		None	J	T					
29	Mayer, Brown, Rowe & Maw LLP Partnership Capital Account	C	Interest	M	T					
30	Mayer, Brown, Rowe & Maw LLP Cash Balance Retirement Plan	C	Dividend	M	T					
31	Minnesota Life: Variable Adjustable Life Insurance (spouse)		None	J	T					
32	Travelers: Variable Life Policy		None	J	T					
33	Northwestern Mutual Life Policy (spouse)		None	J	T					

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Robert M. Dow, Jr.	July 19, 2007

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

☐	**NONE** (No reportable income, assets, or transactions)									
34	Hoskins Group LP -- wife's family investment partnership									
35	– Financial Square Trust PrimeObligation FD Admin CL Fund 463 (Principal)	D	Interest	M	T					
36	– Buffalo Jayhawk China Fund		None	C	T					
37	– Alcoa Incorporated (AA)	A	Dividend	J	T					
38	– Allstate Corp. (ALL)	A	Dividend	J	T					
39	– Amgen, Inc. (AMGN)		None	J	T					
40	– Applied Materials, Inc. (AMAT)	A	Dividend	J	T					
41	– Archer Daniels Midland (ADM)	A	Dividend	J	T					
42	– BP PLC ADR (BP)	A	Dividend	J	T					
43	– Chevron Corp. (CVX)	A	Dividend	J	T					
44	– Cincinnati Financial Corp (CINF)	A	Dividend	J	T					
45	– Citigroup Inc. (C)	A	Dividend	J	T					
46	– Friedman Billings Ramsey A (FBR)	A	Dividend	J	T					
47	– General Electric Co. (GE)	A	Dividend	J	T					
48	– Glaxo SmithKline Sponsored PLC ADR (GSK)	A	Dividend	J	T					
49	– Grant Prideco, Inc. – W/I (GRP)		None	J	T					
50	– Intel Corp. (INTC)	A	Dividend	J	T					

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Robert M. Dow, Jr.	July 19, 2007

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

☐	**NONE** (No reportable income, assets, or transactions)									
51	--Kinder Morgan Energy Partners Limited Partnership Interest (KMP)	B	Dividend	K	T					
52	– Lilly Eli & Co. (LLY)	A	Dividend	J	T					
53	– Mentor Corp./Minn. (MNT)	A	Dividend	J	T					
54	– Modine Manufacturing Co. (MOD)	A	Dividend	J	T					
55	– Newmont Mining Corp.	A	Dividend	J	T					
56	– Pitney Bowes, Inc. (PBI)	A	Dividend	J	T					
57	– Schlumberger, Ltd. (SLB)	A	Dividend	J	T					
58	– United Technologies Corp. (UTX)	A	Dividend	J	T					
59	– Veeco Instrs, Inc. Del (VECO)		None	J	T					
60	–Johnson and Johnson (JNJ)		None	J	T					
61										
62										
63										
64										
65										
66										
67										

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Robert M. Dow, Jr.	July 19, 2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part II: all involvement with both Mayer, Brown, Rowe & Maw LLP Partnership Capital Account and Cash Balance Plan would terminate upon my separation from the law firm, which would take place prior to any service in the federal judiciary.

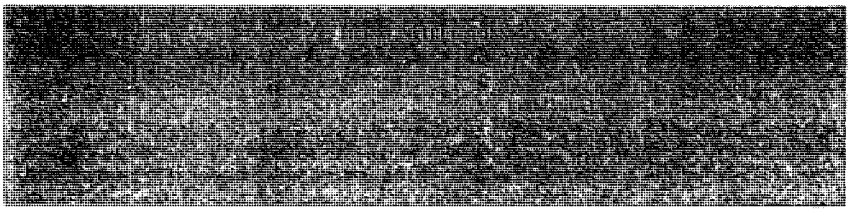
IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Date July 19, 2007

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)



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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		35	000	Notes payable to banks-secured		97	000
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		11	000	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		300	000
Real estate owned-add schedule		450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance		5	300				
Other assets itemize:							
401(k) Account		435	000				
IRA, 529 plans, MSA		81	000				
Law firm partnership accounts		321	000	Total liabilities		397	000
Hoskins Group LP		197	000	Net Worth	1	168	300
Total Assets	1	565	300	Total liabilities and net worth	1	565	300
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Unlisted Securities	
First Community Bank of Joliet	$10,000
Sauk Valley Community Bank	1,000
Total Unlisted Securities	$ 11,000
Real Estate Owned	
Personal residence	$ 450,000
Real Estate Mortgages Payable	
Personal residence	$ 300,000

AFFIDAVIT

I, Robert M. Dow, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 13, 2007
(DATE)

(NAME)

(NOTARY)

"OFFICIAL SEAL"
Maria E. Izaguirre
Notary Public, State of Illinois
My Commission Exp. 05/24/2008

Senator DURBIN. Mr. Dow, thank you for joining us today. It's great to meet your family, too, and I'm glad your friends have joined you here as well.

We'll keep the record open. If there are any questions that will be submitted to either Judge Tinder or yourself by other members of the Judiciary Committee, they will have a week to do so. If you can give a prompt response to those, it will help us move the nomination process forward.

If there is nothing further to come before the committee, the Judiciary Committee stands adjourned.

[Whereupon, at 4 p.m. the hearing was adjourned.]

[Questions and answers and a submission for the record follow.]

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QUESTIONS AND ANSWERS

Responses of John Daniel Tinder
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Patrick J. Leahy

1. **You prosecuted four capital murder cases, all of which are listed on your Senate questionnaire as among your most significant litigation experiences. Despite your recommendation for a death sentence in all four cases, in two of those four cases the defendant was given a sentence less than death. Given your apparently aggressive pursuit of the death penalty as a prosecutor, what assurance can you give that, in capital cases, you would treat capital defendants fairly without favor to the government?"**

   Response: I can assure the Committee that, if confirmed, I will treat all litigants fairly, including defendants in capital cases, and my record as a judge bears that out. It is true that as prosecutor, I advocated on behalf of victims of violent crimes for punishment of convicted defendants. During another portion of my career, as a public defender, I represented individuals accused of murders and other serious crimes, and in doing so, argued for leniency for my clients. However, my role as an advocate in litigation in seeking particular outcomes in cases ended when I became a judge in September of 1987. Since that time, I have presided over more than one thousand federal criminal cases as a judge. I strive in all cases to be fair to both sides of the litigation. Defendants in criminal cases are clothed in the presumption of innocence; no case begins with an expectation that one side or the other is likely to prevail and no favor is provided to either side. Each aspect of each case is dependent solely on the facts presented and the applicable law. The range of experience that I have had in litigation as an advocate and as a judge demonstrates that, if confirmed, I would treat capital defendants fairly without favor to the government.

2. **You gave a speech in February 1986 before the Evening and Breakfast Exchange Clubs of Logansport, Indiana discussing the importance of criminal punishment. According to a February 10, 1986 article in the *Logansport Pharos - Tribune*, you stated in that speech that "[i]t's time for us to be less accepting and more demanding when it comes to crime. We must be less willing to excuse and more willing to punish." Given your speech describing how you would be "less willing to excuse and more willing to punish," what assurances can you give that you will be fair to the rights of all litigants who come before you, including appeals from criminal defendants?**

   Response: The speech referred to in the question was given when I was United States Attorney, before I was nominated to be a United States District Court Judge. As noted in the response to Question number 1, my role as an advocate in litigation ended when I became a judge. My work as a judge began after a dozen years as a litigator, which included service as both a prosecutor and a public defender, and also involved

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representing both plaintiffs and defendants in civil litigation. My record of fairness as a judge to all litigants, including defendants in criminal cases, for over twenty years should provide assurance that I will be fair to the rights of all litigants if I am appointed to the Court of Appeals for the Seventh Circuit.

3. **In the confirmation hearings for Chief Justice Roberts and Justice Alito last Congress, there was extensive discussion of the amount to which judges and Justices are bound to follow previous court decisions by the doctrine of *stare decisis*. In your opinion, how strongly should judges bind themselves to the doctrine of *stare decisis*? Does the commitment to *stare decisis* vary depending on the court?**

Response: I believe that all lower courts are required to follow precedent established by the Supreme Court of the United States. The principle of *stare decisis* is critical to the predictability that is essential in American litigation. Only the Supreme Court has the authority to alter established precedent.

4. **We are at a pivotal moment in American history for the preservation of the careful balance of powers between the branches of our government, faced with a President making sweeping claims to nearly unchecked executive powers. Both Congress and the courts must act as a check on abuses of power. Congressional oversight serves as a check on the Executive, in cases like Iran-Contra or warrantless spying on American citizens. It can also serve as a self-check on abuses of Congressional power. When Congress looks into ethical violations or corruption, including inquiring into lobbyist Jack Abramoff's influence on members of Congress, we make sure that we exercise our own power properly. Do you agree that Congressional oversight is an important means for creating accountability in all branches of government?**

Response: I agree that the checks and balances of the three branches of our federal government, including Congressional oversight, have been proven over the history of this country to result in accountability in all branches of government.

5. **One of the central questions I have for any judicial nominee is whether he or she understanding the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has not. The Supreme Court defined the special role for the courts in stepping in where the political process fails to police itself in the famous footnote 4 in United States v. Carolene Products (1938). In that footnote, the Supreme Court held that : "[L]egislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation."**

Can you discuss the importance of the Supreme Court's responsibility under the

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***Carolene Products* footnote to intervene to ensure that all citizens have fair and effective representation and the consequences that would result if it failed to do so?**

Response: The portion of the *Carolene Products* footnote quoted reflects a concern that even in a democracy, a majority of the electorate can impose invidious discrimination on minorities and others who have little access to the political process. This concept is not confined to a judicial footnote, but rather, is the bedrock of the Supreme Court's equal protection jurisprudence and provides the controlling precedent to be applied by the lower courts. The Court has recognized that appropriate judicial review of legislative enactments or executive actions includes heightened judicial scrutiny when fundamental rights and the rights of protected classes are implicated. This can include "strict" scrutiny for matters involving suspect classifications and an "intermediate" level of scrutiny for classifications based on sex or illegitimacy. The Court has made clear that a rational basis test is insufficient when addressing legislation having an adverse impact on such groups or rights. The Court has noted that to approach constitutional challenges with less exacting review would perpetuate discrimination, leaving the politically powerless at the mercy of a popular but discriminatory majority. The Supreme Court has viewed its responsibility to enforce equal protection, even in the face of popular legislation, as another check and balance in the fundamental structure of a government of three equal branches. Courts should approach such questions cautiously, though, to ensure that judicial review is a careful application of constitutional principles rather than the substitution of a judge's personal preference for the determination of the democratically elected legislative body.

6. **As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I strongly believe that all litigants in all courts, including federal courts of appeal, should be treated fairly, regardless of their political beliefs, their financial status or whether they appear as a plaintiff or defendant. My commitment to this concept is founded on my experiences as a lawyer in representing indigent individuals as well as people and corporations of more substantial means. Through experiences as a prosecutor, a public defender and an attorney in private practice, I have gained a sense of the importance of fair treatment for litigants. A prosecutor works directly with the victims of crime and their families to insure that the harms they have suffered are not overlooked. A public defender spends a great deal of time explaining the judicial system to indigent clients and their families so that they can appreciate how their case can be presented to receive a fair and just result. These are often individuals who have no place else to turn to understand what can be an intimidating process. In the private practice of law, I had the opportunity to represent both plaintiffs and defendants in civil litigation from a wide range of financial backgrounds and political beliefs, which emphasized for

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me that all litigants want to know that their side of the case will receive a fair hearing. I have also had the privilege as a trial judge to work with jurors from every walk of life, and have experienced close up the effort that jurors make to provide a level scale upon which litigants place their cases for decision. All of these experiences have instilled in me an abiding sense that courts of law are no place for consideration of the financial status or political affiliations and beliefs of litigants. My record as a district judge demonstrates my fidelity to these ideals and should provide assurance to litigants that this commitment would continue if I were to be appointed to the Court of Appeals for the Seventh Circuit.

7. **Over the past decade, the Supreme Court has struck down an unprecedented number of federal statutes, most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the Fourteenth Amendment, for example, *Flores v. City of Boerne*, 117 S. Ct. 2157 (1997), *Kimel v Florida Board of Regents*, 120 S. Ct. 631 (2000), and *Board of Trustees v. Garrett*, 19 S. Ct. 2240 (1999). The Supreme Court has also recently struck down statutes as being outside the authority granted to Congress by the Commerce Clause, such as in the case of *U.S. v. Lopez*, 115 S. Ct. 1624 (1995) or *U.S. v. Morrison*, 120 S. Ct. 1740 (2000).**

I am hopeful that the Court's decision in *Gonzales v. Raich*, 125 S. Ct. 2195 (2005) signals a turn away from the diminishing of the authority of Congress to legislate to protect the American people. What is your understanding of the scope of congressional power under Article I of the Constitution, in particular, the Commerce Clause, and under Section 5 of the Fourteenth Amendment?

Response: The cited cases illustrate the scope of congressional power under the Commerce Clause of Article I of the Constitution and Section 5 of the Fourteenth Amendment: the Supreme Court recognizes that this legislative authority is very broad. This precedent guides appellate and district courts in all Commerce Clause and Section 5 cases that come before them. The Supreme Court has clearly reaffirmed the breadth of that power in *Gonzales v. Raich*, a decision which emphasized the strength of Congress' power to regulate even purely local activities that are part of an economic class of activities which have a substantial effect on interstate commerce.

8. **In December, 2005, after the McCain Amendment prohibiting cruel, inhuman, and degrading treatment of detainees by U.S. personnel under all circumstances was strongly opposed by the Administration, President Bush worked out a deal with Senator McCain and the amendment passed the Senate with overwhelming support. However, in his December 30, 2005, signing statement, President Bush ignored the public deal and wrote that the executive branch "shall construe" the McCain amendment "in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will**

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assist in achieving the shared objective of the Congress and the President ... of protecting the American people from further terrorist attacks." If an alleged violation of the McCain Amendment prohibiting cruel, inhuman, and degrading conduct by American personnel, were to come before a court - and I'm not asking you to comment on the constitutionality or propriety of the law - would it be appropriate for that court to consider the President's signing statement, in addition to the law itself, and the words of those who drafted it?

Response: None of the cases that have come before me have involved the McCain Amendment or, more generally, arguments based on Presidential signing statements. It is, however, common in litigation involving federal legislation for parties to refer to the legislative history of the statute involved, including testimony presented at Congressional hearings and statements of legislators made during hearings and in debates on the legislation. It is also common for litigants to refer to rules and regulations promulgated by executive branch agencies regarding the construction and enforcement of particular legislation. When a court is required to construe a federal statute, the plain language of an unambiguous act eliminates the need to refer to the other tools of statutory construction; ambiguity requires the court to utilize both the statutory language and those tools, such as rules of statutory construction, legislative history and executive branch action to construe the meaning of the act. If a litigant referred to a Presidential signing statement of the type noted, which indicated how the executive branch intended to construe the law, such a reference would not appear to be inappropriate and it is proper for a court to consider all arguments of the parties.

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SUBMISSION FOR THE RECORD

Statement of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On Judicial Confirmation Hearing
September 25, 2007

Today, the Committee holds yet another hearing with another circuit court nominee and another district court nominee. We will hear from two more nominees for lifetime appointments to the federal courts – John Daniel Tinder to the U.S. Court of Appeals for the Seventh Circuit and Robert M. Dow, Jr. to the U.S. District Court for the Northern District of Illinois.

Both of these nominees have the support of their home-state Senators. I thank Senators Lugar, Bayh, and Obama for their consideration of these nominees, and I thank Senator Durbin for agreeing to chair this important hearing.

The tremendous progress we have made this year in considering and confirming judicial nominations is sometimes lost amid the partisan sniping over a handful of controversial nominations.

This session of Congress, the Committee has reported out 34 lifetime appointments to the federal courts and the Senate has already confirmed 29 of them. That is eight more confirmed by the middle of September this year than were confirmed in all of 2005 when the Senate, with a Republican Chairman and Republican majority, was considering the nominees of this Republican President. It is 12 more confirmations than were achieved during the entire 1996 session when Republicans stalled consideration of President Clinton's nominations.

We have confirmed three circuit court nominees so far this year. That is the same as the number of President Clinton's circuit court nominations confirmed by this time in 1999 with a Republican-led Senate and three more than the Republican-led Senate confirmed in the entire 1996 session. That was the session in which not a single circuit court nominee was confirmed.

The Senate has confirmed 20 Circuit Court nominations and 129 total federal judicial nominees in my two years as Judiciary Chairman. During the Bush Presidency, more circuit judges, more district judges, and more total judges have been confirmed while I have served as Judiciary Chairman than during the tenures of either of the two Republican Chairmen working with Republican Senate majorities.

I continue to try to work with this White House and to make progress. Next year the Thurmond rule will kick in until after a new president is inaugurated. That is why I was disappointed that this White House chose not to work with Democratic and Republican home-state senators in connection with the recent nomination of Duncan Getchell to the Court of Appeals for the Fourth Circuit. Senators Warner and Webb from Virginia worked together to interview candidates and sent a slate of five highly-qualified nominees to the White House. President Bush chose to ignore their recommendations in

making his nomination, showing his intent to pick a political fight instead of a judge to fill an important vacancy.

The Administrative Office of the U.S. Courts lists 47 judicial vacancies. The President has sent us only 24 nominations for these remaining vacancies. Twenty-three of them – almost half – have no nominee. Of the 18 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for eight of them, more than a third. Of the 16 circuit court vacancies, six -- more than a third -- are without a nominee. If the President had worked with the Senators from Michigan, Rhode Island, Maryland, California, New Jersey, and Virginia, we could be in position to make even more progress.

We have helped cut the circuit vacancies from a high mark of 32 in the early days of this Administration, to as few as 13. Contrast that with the Republican-led Senate's lack of action on President Clinton's moderate and qualified nominees that resulted in increasing circuit vacancies during the Clinton years from 17 to 26. During those years, the Republican-led Senate engaged in strenuous and successful efforts under the radar to keep circuit judgeships vacant in anticipation of a Republican President. More than 60 percent of current circuit court judges were appointed by Republican Presidents, with the current President having appointed more than 30 percent of the active circuit judges already.

We will continue moving forward efficiently as long as the President sends us qualified, consensus nominees and we are able to work together. I look forward to hearing from the nominees before us today.

# # # # #

NOMINATION OF MICHAEL J. SULLIVAN, OF MASSACHUSETTS, TO BE DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

WEDNESDAY, SEPTEMBER 26, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:29 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Edward M. Kennedy, presiding.

Present: Senators Kennedy, Schumer, Cardin, and Whitehouse.

OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. I think we will get started. My friend and colleague, John Kerry, is on his way over, and also some other members of our Committee. But we will get started, and we will ask them if they would be good enough to say whatever comments they want to make when they arrive. But we will move along here this afternoon.

We will come to order, and it is a pleasure to welcome to the Committee today a friend, Michael Sullivan, whom President Bush has nominated to serve as the Director of the Bureau, Alcohol, Tobacco, Firearms, and Explosives. I would also like to welcome Mr. Sullivan's wife, Theresa, daughter, Alyson, and his father, Thomas Sullivan. Your family is surely proud, Mr. Sullivan, that you have served the Commonwealth of Massachusetts for over a decade, and I look forward to hearing your views that are so important to the country.

A fellow native Bostonian, Mr. Sullivan has been a lifelong resident of the Commonwealth of Massachusetts, a graduate of Boston College, Suffolk University Law School, had a distinguished career dedicated to public service. Beginning in 1990, Mr. Sullivan served as a representative in the State Legislature for three terms, then in 1995 went on to become the district attorney for Plymouth County, where he began to develop a strong relationship between himself and the Boston Police Department and the ATF. In 2001, Mr. Sullivan was appointed to serve as the United States Attorney for the District of Massachusetts, a position he still holds today. Since August 2006, Mr. Sullivan has also had a position of Acting Director of the ATF.

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As you know, the ATF is a key law enforcement agency within the Justice Department with a dual responsibility of enforcing criminal laws and regulating the firearms and explosives industry. With the new law enacted last year, this is the first confirmation hearing for the position of the Director, and I hope it will provide us the good foundation for future collaboration between the ATF and this Committee.

I am particularly interested in the role ATF can play to help stem the tide of gun violence in our country. Nearly 30,000 American lives are lost to gun violence each year, more than 80 people a day. And his book, "Private Guns, Public Health," David Hemenway from Harvard Injury Control Research Center observed that each day guns were used in the commission of more than 3,000 crimes. The U.S. rates of death and injury due to firearms and rate of crimes committed with firearms are far higher than those of any other industrialized nation. And just last week, the International Association of Chiefs of Police, the IACP, took a dramatic stand against the escalating gun violence in our communities, releasing a comprehensive report with 39 key recommendations to reduce gun violence, and the chiefs' compelling report and specific recommendations are a clear call to action.

Without further delay, Congress and the administration need to do our part by enacting concrete reforms that will reduce crime, protect the safety of police officers, and all Americans. We all know what needs to be done, and we have done so little for so long. We need to strengthen the Brady law and the background checks for gun purchases, especially for persons with mental illness; close the gun show loophole once and for all; renew the assault weapons ban. We need to pass Senator Feinstein's bill for stricter requirements on the sale of extremely dangerous .50 caliber sniper rifles. We need to amend the Federal law to ensure that all cop- killer bullets are banned. We need to do more to see that law enforcement has access to the newest and most effective crime-solving technologies like micro-stamping.

The IACP's impressive work in producing ground-breaking reports should not be ignored, and I am hopeful we can work together across party lines to reduce gun violence, solve gun crimes, protect our police officers, and do all that we can to make our communities safer. Perhaps our dialogue today will be one positive step forward in that direction.

If you would be good enough, I would like to ask you, Mr. Sullivan, if you would be good enough to come forward, and I would ask you to raise your hand and stand to be sworn. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SULLIVAN. I do.

Senator KENNEDY. Thank you.

If you would be good enough, I will ask if you take the name tapes—we know that you are not John Kerry—and we will have the right name tape here, and we will ask you when Senator Kerry comes in, we will ask if you would hold for just a few moments and let him make what comments that he might so desire to make.

If you have a statement, we would be glad to hear it.

STATEMENT OF MICHAEL J. SULLIVAN, OF MASSACHUSETTS, NOMINEE TO BE DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

Mr. SULLIVAN. Just a brief statement, Mr. Chairman. First and foremost, thank you very much, Mr. Chairman, for holding this Committee hearing. Thank you for considering my nomination. I want to thank the Committee members as well. I especially want to thank Congress for the great support they have been providing to the Bureau of Alcohol, Tobacco, Firearms, and Explosives. It is an investment in a very important and critical agency. I want to thank the President of the United States for honoring me with the opportunity to serve in this administration.

At this point in time, Mr. Chairman, I would hold for Senator Kerry.

Senator KENNEDY. Good. Find.

John?

Senator KERRY. I apologize.

Senator KENNEDY. No, no. You were right on time.

Senator KERRY. Not quite, but thank you.

Senator KENNEDY. We congratulate you on your amendment on the floor, John, this afternoon, and we thank you very much for coming here as well. We have introduced the nominee's wife and daughter and father. We talked about his education at Boston College and his dedication to public service and his career at the U.S. Attorney's Office, and we are looking forward to—this is our first confirmation of an ATF Director for the Judiciary Committee, so this is an important first step, and it is delightful that we have got Mr. Sullivan here, and we look forward to hear what comments you have to make.

PRESENTATION OF MICHAEL J. SULLIVAN, OF MASSACHUSETTS, NOMINEE TO BE DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES BY HON. JOHN KERRY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KERRY. Well, thank you very much, Mr. Chairman, and my colleague. I very my appreciate it, and I apologize for being a moment late.

I am pleased to be able to be here to introduce the nominee, and you have already commented on the fact that I guess his education background is before the Committee and some of the basics of his law enforcement.

Let me just say to start with that it is a pleasure to be able to support the nominee on a bipartisan basis. We have had some contentious fights around here occasionally, and it is really a pleasure to have someone come before the Committee who in the performance of his responsibilities has always avoided partisan politics. And I think that is one of the reasons why the Committee can have great confidence in this nomination.

He, as we know, served in the legislature, and he served three terms there, and out of that came the appointment to fill the shoes of the district attorney in Plymouth County. I knew his predecessor well because I worked with him when I was in the district attorney's office in Middlesex County, so I know the job, and I know

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what Michael Sullivan brought to that job, Mr. Chairman. He did an exceptional job of performing those responsibilities. He did it with creativity. He opened up old murder cases that people had thought had gone cold and nobody could prosecute. He prosecuted murder cases personally. He earned a national reputation with respect to child abuse, family abuse, domestic violence, and elder abuse. And he showed his ability in each of those, which is what earned him the nomination to be the U.S. Attorney.

He became the U.S. Attorney, as you know, Mr. Chairman, at a very difficult moment. It was almost, I think, in the week immediately after 9/11, and that is being thrown into the fire, so to speak, pretty intensely. He approached that, again, with great skill and without any politics. I think, you know, he wasn't a Democrat prosecutor or a Republican prosecutor. He was a good law enforcement officer. And that is what we need in any law enforcement duty, but certainly now in the context of the war on terror and the challenges that we have at ATF.

A week after those flights took off from Boston, he wound up with the responsibility of building a counterterrorism unit, which he did; an antiterrorism task force, which coordinated Federal, State, and local efforts in those early days, to prevent future terrorist attacks. He prosecuted the Shoe Bomber, Richard Reid. And he also kept an eye on the next war, so to speak, the crimes of the future: computer hacking, identity theft, Internet auction and credit card fraud, and copyright and trademark victims. So I think he has a very broad base in all of the challenges of law enforcement that we face today.

He has been doing this job of Acting Director of the ATF for over a year now. It is a tough job. There are 5,000 employees, a $1 billion budget. But I think it is a job that he has proven more than qualified and capable of performing.

While there at ATF earning his spurs to be confirmed by the Senate, he has kept up the traditional work of reducing and combating violent crime; but he is also already adapting the agency to its new mission of preventing terrorism. And so, you know, I really think, Mr. Chairman, that we are living in an age where the ability of agencies to work with each other and the challenges in law enforcement of communicating with agencies and of processing intelligence and being sensitive to constitutional requirements on eavesdropping and a host of other things, and citizen rights, is always a delicate balance. I know that Michael Sullivan understands that balance, and I think he is going to be easy for this Committee to confirm.

So I commend him to you, Mr. Chairman, and I am pleased to be able to introduce him today.

Senator KENNEDY. Well, thank you very much, Senator Kerry.

Senator KERRY. And you can save all the tough questions for him.

[Laughter.]

Senator KENNEDY. Yes, there you go. I was listening to you. I will just give a softball one and one that he might want to comment later on. I was particularly interested in the work that they have done in the area of health fraud and pharmaceutical fraud. I think, if I am not mistaken, what the department has up in Bos-

ton in terms of recoveries is about a third of what they recover nationally, general figures. I mean, maybe you can talk a little bit about it, but this is an area in health that they have been particularly interested in as well, and it is something that we have noted.

We want to thank you very much.

Senator KERRY. Thank you, Mr. Chairman.

Senator KENNEDY. It is good to see you.

Senator KERRY. My pleasure.

Senator KENNEDY. Very good.

So there you go. A good start so far.

Mr. SULLIVAN. Thank you again, Mr. Chairman, and let me thank Senator Kerry for that kind and very generous introduction. I have had the great opportunity, obviously, of working with the Senators in Massachusetts on a host of very important issues on behalf of the District of Massachusetts and the Nation.

I was also thanking the President of the United States for the confidence he has shown in me, nominating me to serve as United States Attorney shortly after September 11th and the support that I received from the U.S. Senate on that confirmation, and then most recently obviously for the nomination to head up a very important Federal law enforcement agency, the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

I appreciate you introducing my wife, Terry, and my daughter, Alyson, and my dad, Tom. I would be remiss if I didn't mention my other three children, who I think are at home right now with their fingers crossed on behalf of their dad: my son, Joseph; my daughter, Kelly; and my son, James, who I know under different circumstances would rather be here. But classes kept them away from Washington, Mr. Chairman.

I also want to thank the men and women of ATF. I have had the opportunity now to serve for a little bit over a year as the Acting Director. I have received great support, encouragement, and assistance from people who are working tirelessly on behalf of the American public. The successes we have been able to achieve over the last year would not have happened but for the great effort on behalf of the men and women of ATF. And I am prepared to answer any questions or concerns that the Chairman or Committee members may have.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Michael James Sullivan

2. **Position**: State the position for which you have been nominated.

   Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Residence:
   Abington, MA

   Business:
   United States Attorney Office
   One Courthouse Way, Suite 9200
   Boston, MA 02210

   Bureau of Alcohol, Tobacco, Firearms and Explosives
   650 Massachusetts Avenue, NW, Room 8000
   Washington, DC 20226

4. **Birthplace**: State date and place of birth.

   1954 in Boston, Massachusetts

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married.
   Spouse's name: Theresa J. Sullivan (f/k/a Theresa J. Greenwood)
   Occupation: Manufacturer's Representative, HGA, 2 Irwin Court, Lynbrook, NY 11563

   We have four dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Boston College
9/72 - 5/73
1/76 - 12/78
BA – Business Administration, 1979, Cum Laude

Suffolk University Law School
9/79 – 5/83
JD – 1983, Cum Laude

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate

Acting Director — 2006 - present
Bureau of Alcohol, Tobacco, Firearms, and Explosives
650 Massachusetts Ave, NW
Suite 8000
Washington, DC 20226

United States Attorney — 2001 – present
District of Massachusetts
One Courthouse Way
Suite 9200
Boston, MA 02210

Member, Attorney General's Advisory Committee — 2005-present

Subcommittees:
Civil Rights
Controlled Substances and Asset Forfeiture
Cyber/Intellectual Property
Violent and Organized Crime
Sentencing Guidelines
Terrorism/National Security

Working Groups:

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Massasoit Community College Instructor 900 Randolph Street Canton, MA 02021-1372	2000 – 2001
Brockton Hospital Private non-profit corporation Trustee – unpaid 680 Centre Street Brockton, MA 02302-3395	1998 – 2001
Old Colony YMCA Private non-profit corporation Director – unpaid 320 Main Street Brockton, MA 02301	2001
Continuing Education Institute Private non-profit corporation Director – unpaid 108 Water Street Watertown, MA 02172	1989 – 2001
Consumer Credit Counseling Services Private non-profit corporation Director – unpaid 8 Winter Street Boston, MA	1987 – 1991
Commonwealth of Massachusetts Plymouth County District Attorney 32 Belmont Street Brockton, MA 02301	1995 – 2001
State Representative Commonwealth of Massachusetts House of Representatives State House Boston, MA	1991-1995
McGovern & Sullivan, P.C. (Law Office/Professional Corporation) Attorney/Co-owner 55 N. Franklin St. Holbrook, MA 02343	1989 – 1995

Bolles & Pritchard (Law Office)	1984 – 1989
Associate	
289 Union St	
Holbrook, MA 02343	
The Gillette Company	1973 – 1989
(various manufacturing positions)	9/73 – 9/75
Technician	9/75 – 2/97
Staff Assistant to Director – Corporate Product Evaluation	2/77 – 5/79
Personnel Representative	5/79 – 2/81
Compensation Analyst	2/81 – 2/83
Manager – Compensation and Benefits	2/83 – 3/85
Assistant to the President – Safety Razor Division	3/85 – 6/86
Manager – Quality Operations	6/86 – 2/87
Manager – Professional Training and Development	2/87 – 5/89
Prudential Tower Building	
Boston, MA 02199	

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

   None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Honorary Degree of Law – Suffolk University
   Honorary Degree of Law – New England School of Law

   Association of Certified Fraud Examiners, Greater Boston Chapter
   2006
   Fraud Fighter of the Year

   Melissa Gosule Foundation
   May 2005
   Honor, Action, Appreciation award

   Norfolk County Prosecutors Association, Steven J. Butler, President
   March 2005
   In appreciation for services to the citizens of Norfolk County

   Bridgewater State College
   2005

Masters in Public Administration Program 2005 Public Service Award

Islamic Council of New England
December 2004
Exceptional Cooperation with the Muslim Community

Middlesex County Bar Association
May 2004
In recognition of exemplary public service as a prosecutor, lawyer, educator and citizen

Democratic National Convention, Donald W. Anderson and Scott W. Sheafe
July 2004
In appreciation for a safe and secure Democratic National Convention

United States Secret Service
2004
Directors Honor Award (for outstanding assistance and support on behalf of the investigative and protective responsibilities of the United States Secret Service)

Italian American Police Officers Association, Inc., Greater Boston Crime Task Force
November 2003
The Distinguished Law Enforcement Award

United States Department of Justice/Office of Justice Programs
Executive Office for Weed and Seed
May 2003
Coordination Honor Award from the Community Coalition for Neighborhood Restoration with Lawrence Massachusetts Weed and Seed

High Technology Crime Investigators Association
June 2002
In appreciation of commitment to High Technology Crime Investigators Association and to the investigation of high technology crimes

DARE Officers Association
June 2002
In appreciation for commitment to children of Massachusetts and the Massachusetts DARE Officers Association

Stonehill College
May 2002
President's Medal

Brockton Visiting Nurses Association, Community Service Award
2002
Community Service Award in appreciation for outstanding commitment

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Whitman's Veteran Association
November 2001
Honorary Grand Marshal

Massachusetts District Attorney's Association
September 2001
In recognition for service as Plymouth County District Attorney (1995 - 2001) and President of MA District Attorney's Association (Sept. 1998 - Sept. 1999)

Brockton Hospital
2001
Presidential Medal for Community Service

Plymouth County DARE Officers
2001
In appreciation for 7 years of dedicated service to the children of Plymouth County

Child Advocacy Center of the Plymouth County District Attorney's Office
1998
In appreciation for commitment to the children of Plymouth County

The Republican Leadership of the Massachusetts House of Representatives
1995
In appreciation for service to the Massachusetts House of Representatives from 1991 - 1995

Anti Defamation League
Date unavailable
In recognition for selfless contribution to ADL's Fight Against Bigotry

United States Secret Service, W. Ralph Basham, Director
Date unavailable
In recognition of efforts and superior contributions to the law enforcement responsibilities of the United States Secret Service

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

I have been a member of the Plymouth County Bar Association and the Massachusetts Bar Association for periods during my legal career. I am not presently a member of either Bar Association. I have never been an officer of a bar association. I am a former member of the Massachusetts District Attorneys Association, and the National District

Attorneys Association. I served as President of the Massachusetts District Attorneys Association from September 1998 to September 1999.

Since 2005, I also have served as a member of the Attorney General's Advisory Committee, including on the following subcommittees: Civil Rights, Controlled Substances and Asset Forfeiture, Cyber/Intellectual Property, Violent and Organized Crime, Sentencing Guidelines, Terrorism/National Security. I also Chair the Health Care Fraud working group.

I also have served on the following commissions and councils (dates are approximate):

Member, Governor Mitt Romney's Council on the Death Penalty (2003-2004)
Commissioner, Governor Paul Cellucci's Commission on Father Absence and Family Support (1998)
Commissioner, Governor William Weld's Commission on School Safety (1992-1996)
Member, Massachusetts Attorney General Scott Harshbarger's Urban Alliance (1996)
Advisory Committee on Shaken Baby Syndrome, Chair (1996-2001, Plymouth County)

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Massachusetts, 1983. There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

I am a member in good standing in Massachusetts and admitted to practice before the Massachusetts Supreme Judicial Court without interruption since 1983.

I am a member in good standing and admitted to practice in the United States District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit without interruption since 1984.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Currently, I am a member of the fraternal Catholic organization known as the Knights of Columbus. I also was a member of the Plymouth County Republican Club from 1990-2001.

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Knights of Columbus is a fraternal, religious-based service organization that limits membership to males over age 18 of the Catholic faith. I have made no efforts to change that policy.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have attempted to provide all readily available materials in response to this question. Those materials have been provided to the Committee in binders accompanying this questionnaire.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have attempted to provide all readily available materials in response to this question. Those materials have been provided to the Committee in binders accompanying this questionnaire.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have attempted to provide all readily available materials in response to this question. Those materials have been provided to the Committee in binders accompanying this questionnaire.

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d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have attempted to provide all readily available materials in response to this question. Those materials have been provided to the Committee in binders accompanying this questionnaire.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have attempted to provide all readily available materials in response to this question. Those materials have been provided to the Committee in binders accompanying this questionnaire.

14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

State Representative — 1991 – 1995
7th Plymouth District
Massachusetts House of Representatives
Elected 11/90, 11/92, 11/94

Commissioner — 1992-1996
Governor William Weld's Commission on School Safety

District Attorney — 1995 – 2001
Plymouth District
Commonwealth of Massachusetts
Appointed by Governor William F. Weld in 5/95
Elected 11/96 and 11/98

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Commissioner 1998
Governor Paul Cellucci's Commission on Father Absence and Family Support

United States Attorney 2001 – present
District of Massachusetts
Nominated by President George W. Bush and confirmed by the United States Senate

Member 2003-2004
Governor Mitt Romney's Council on the Death Penalty

Bureau of Alcohol, Tobacco, Firearms, and Explosives 2006 – present
Acting Director
Appointed by President George W. Bush to serve as Acting Director.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Abington Republican Town Committee 1990-2001

Bush/Cheney Plymouth County Chairperson 2000

Cellucci/Swift Transition Team 1998

Cellucci/Swift Plymouth County Chairperson 1998

Weld/Cellucci Coordinator 1994

Candidate

Exploratory Committee to Elect Michael J. Sullivan to the United States Senate 2000

Committee to Elect Michael J. Sullivan
District Attorney 1998

Committee to Elect Michael J. Sullivan
District Attorney 1996

Committee to Elect Michael J. Sullivan
State Representative 1994

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Committee to Elect Michael J. Sullivan State Representative	1992
Committee to Elect Michael J. Sullivan State Representative	1990

15. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as clerk for a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not been a sole practitioner.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

The Gillette Company Gillette Park Boston, MA 02127	1973 – 1989
(various manufacturing positions)	9/73 – 9/75
Technician	9/75 – 2/97
Staff Assistant to Director – Corporate Product Evaluation	2/77 – 5/79
Personnel Representative	5/79 – 2/81
Compensation Analyst	2/81 – 2/83
Manager – Compensation and Benefits	2/83 – 3/85
Assistant to the President – Safety Razor Division	3/85 – 6/86
Manager – Quality Operations	6/86 – 2/87
Manager – Professional Training and Development	2/87 – 5/89
Bolles & Pritchard (Law Office) Associate 289 Union Street Holbrook, MA 02343	1984 – 1989
McGovern & Sullivan, P.C. 55 North Franklin Street Holbrook, MA 02343 (Law Office/Professional Corporation)	1989 – 1995

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Attorney/Co-owner)

State Representative Commonwealth of Massachusetts House of Representatives State House Boston, MA	1991-1995
Plymouth County District Attorney Commonwealth of Massachusetts 32 Belmont Street Brockton, MA 02301	1995 -- 2001
United States Attorney District of Massachusetts One Courthouse Way Suite 9200 Boston, MA 02210	2001 – present
Bureau of Alcohol, Tobacco, Firearms, and Explosives Acting Director 650 Massachusetts Ave, NW Suite 8000 Washington, DC 20226	2006 – present

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

My position at the general practice of Bolles & Pritchard (1984 – 1989) was that of an associate attorney. My areas of concentration were civil litigation, real estate, domestic relations, criminal defense, and estate work.

As a partner/officer at the general practice firm of McGovern & Sullivan, P.C. (1989 – 1995), my areas of concentration were probate and family law, civil litigation, all aspects of real estate and criminal defense work.

As District Attorney (1995 – 2001), I was responsible for the investigation and prosecution of all criminal activity within Plymouth County.

As a State Representative (1991-1995), I represented the citizens of the 7th Plymouth District, which included the towns of Abington, East Bridgewater and Whitman.

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I was appointed in September of 2001 by President George W. Bush as the United States Attorney for the District of Massachusetts, directing offices in Boston, Worcester and Springfield comprising approximately 200 attorneys and support staff. As the United States Attorney, I direct all activities of the offices and oversee all civil and criminal litigation by the United States in the District of Massachusetts.

In September 2006, President appointed me to serve as Acting Director of ATF, a federal law enforcement agency with nearly 5,000 employees. As Acting Director, I oversee the operations of the Bureau and its mission of preventing terrorism, reducing violent crime and protecting the American public. During my tenure as Acting Director, ATF has continued to play an integral role in fighting gang activity and violent crime. ATF-led Violent Crime Impact Teams (VCIT) in 25 cities across the country identify, target and arrest violent criminals to reduce the occurrence of homicide and firearms-related violent crime. In addition to the VCIT initiative, ATF participates with state and local law enforcement and other federal agencies on 110 anti-gang task forces throughout the country.

During my tenure, ATF was the first federal law enforcement agency to agree to deploy additional resources to the New Orleans area in early 2007. ATF has provided six additional special agents to supplement the six permanently assigned to the New Orleans VCIT. ATF also plays a significant role in protecting our military deployed abroad in Iraq and Afghanistan. ATF deploys 5-8 personnel in theater in Iraq to assist with explosives detection and post-blast investigations. The Bureau also recently signed a Memorandum of Agreement with the Department of Defense's Joint Improvised Explosive Device Defeat Organization (JIEDDO) to train six classes of military bomb technicians in 2007 prior to their deployment overseas.

ii. your typical clients and the areas, if any, in which you have specialized.

My practice prior to being appointed District Attorney and serving as United States Attorney was a general practice handling matters ranging from domestic relations to criminal defense. My clients typically included those charged with lower-level crimes, involved in domestic disputes, suffering from personal injury, needing estate work and businesses needing legal representation. As District Attorney and United States Attorney, my clients were the citizens of the Commonwealth of Massachusetts and the United States of America, respectively.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The general nature of my practice prior to being appointed District Attorney and serving as United States Attorney resulted in my appearing in court approximately 25% to 35% of my time. As District Attorney and United States Attorney, I appeared in court only on limited occasions.

i. Indicate the percentage of your practice in:
   1. federal courts; 0%
   2. state courts of record; 10-20%
   3. other courts. 80-90%

ii. Indicate the percentage of your practice in:
   1. civil proceedings; 65%
   2. criminal proceedings. 35%

These percentages have varied over the years. During the first ten years of practicing law, the percentages would range approximately 60% to 70% civil, including probate and family law, with 30% to 50% criminal defense work. During the period of 1995 to 2001 while serving as District Attorney for Plymouth County, Massachusetts, 100% of my practice was in criminal law. Since serving as United States Attorney in 2001, approximately 80% of my time has been dedicated to criminal law, 20% to civil.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

There were a total of three cases, two matters in which I was sole counsel, and one matter in which I was chief counsel.

i. What percentage of these trials were:
   1. jury; 67%
   2. non-jury. 33%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. (a) Commonwealth v. Benjamin, No. 97161 (1995)

(b) Plymouth County Superior Court
Associate Justice Tierney

(c) Russell Redgate (Defense Counsel)
P.O. Box 82
West Barnstable, MA 02668
(508) 362-6607

Assistant District Attorney Paul Dawley (co-counsel)
32 Belmont Street
Brockton, MA 02303
(508) 584-8120

This was a murder trial. I completed the pre-trial preparation and tried the case on behalf of the Commonwealth of Massachusetts. The Defendant was convicted of first-degree murder and sentenced to life in prison. His conviction was affirmed by the Massachusetts Supreme Court. See Commonwealth v. Benjamin, 430 Mass. 673 (2000).

2. (a) Commonwealth v. Dereck Shephard, Nos. 97038, 97039, 97040, 97041,97042, 97043, 97044 (1996)

(b) Plymouth County Superior Court
Judge Gordon Doerfer

(c) Suzanne Rapoza (Defense Counsel)
Committee for Public Counsel Services
9 Belmont Street
Brockton, MA
(508) 538-5316

Assistant District Attorney Jeanne Holmes (co-counsel)
32 Belmont Street
Brockton, MA 02303
(508) 584-8120

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This matter involved a defendant who was indicted on 5 counts of rape of child and indecent assault and battery on a child under age 14. I prepared the case for trial on behalf of the Commonwealth and recommended incarceration of 12-18 years at MCI Cedar Junction. The Defendant ultimately pled guilty and the Judge sentenced him to 6-9 years at MCI.

3. (a) Bartell v. Turner (1989)
Judge Travers

(b) Plymouth County Superior Court Docket #87-0129

(c) Henry Frenette (Defense Counsel)
Frenette & Dukess
130 Liberty Street
Brockton, MA 02301
(508) 587-0531

William Pritchard (co-counsel)
Bolles & Pritchard
289 Union Street
Holbrock, MA 02343
(781) 767-3811

This matter was a zoning dispute between a residential neighbor (my client) and an industrial neighbor (Turner Steel). The defendant had acquired a building permit to build an addition on his steel fabrication plant. The plaintiffs, my client, alleged that it was an illegal building permit in violation of local zoning ordinances. The matter was first heard by the Town of West Bridgewater who approved the variance. We appealed to Superior Court and after trial, the defendant was ordered to remove his addition.

4. (a) Commonwealth v. George Debreczeni (1991)

(b) Plymouth County Superior Court Docket #91507, 91509
Judge Tierney

(c) William Asci (for the Commonwealth)
Plymouth County District Attorney's Office
Brockton, MA 02303
(508) 584-8120

In this matter I represented the Defendant who was charged with Unlawful Possession of a Controlled Substance with Intent to Distribute (Class B) and Unlawful Possession of a Firearm. My involvement included all pre-trial discovery and trial preparation along with appearing with the Defendant for all Court appearances. The Defendant ultimately pled guilty (April 1993) to the

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charges and was sentenced to a one year house of corrections commitment and two years' suspended sentence with probation for two years on and after his release date.

5. (a) Commonwealth v. Donald Melchionno (1993)

(b) Plymouth County Superior Court #94330
Judge Delvecchio

(c) Geline Williams (for the Commonwealth)
Plymouth County District Attorney's Office
32 Belmont Street
Brockton, MA 02303
(508) 584-8120

In this matter, I represented the Defendant who was charged with Armed Robbery and Assault with a Dangerous Weapon. My involvement included preparation/review of all pre-trial discovery, various appearances with the Defendant and preparation of the case for trial. The Defendant pled guilty in November, 1993 to the charges and was sentenced to 2 ½ - 5 years at MCI Cedar Junction which sentence was to serve concurrent with the sentence imposed by Norfolk Superior Court (see beloew).

6. (a) Commonwealth v. Donald Melchionno (1992)

(b) Norfolk County Superior Court #94051
Judge Graham

(c) Tom Brennan (for the Commonwealth)
Norfolk County District Attorney's Office
45 Shawmut Road
Canton, MA 02021
(781) 830-4800

In this matter, I represented the Defendant who was charged with Armed Robbery. My involvement included preparation/review of all pre-trial discovery, various appearances with the Defendant and preparation of the case for trial. The Defendant pled guilty in October, 1992 to the charges and was sentenced to 2 ½ - 5 years at MCI Cedar Junction.

7. (a) William D. Bissett v. Ford Motor Credit Co. et al (1990)

(b) Plymouth Superior Court Civil Action 89-2078A
ALJ Barbara Scott Pearson

(c) Michael E. Hager (for the Defendant)

45 School Street
Boston, MA 02108
(617) 227-3600

I represented the Plaintiff in this matter before the Industrial Accident Board. My involvement included preparation/review of all discovery and various appearances at the Industrial Accident Board with the Plaintiff. Liability was established for the Plaintiff and he received a lump sum settlement which was approved by the Administrative Law Judge in July 1990.

8. (a) USA v. Reid (2002)

(b) Docket #CR-10013-WGY-ALL
Date of Judgment: 1/31/03
Judge William G. Young

(c) Lead Counsel: Gerard T. Leone, Assistant United States Attorney
One Courthouse Way
Boston, MA 02210
(617) 748-3100

Lead Defense Counsel: Tamara Birckhead
Federal Public Defender's Office
408 Atlantic Ave, 3rd Floor
Boston, MA 02110
(617) 223-8061

Richard Colvin Reid pleaded guilty October 2002, one month before scheduled trial, to an eight-count indictment relating to his having been trained by Al-Qaeda in Afghanistan and attempting to ignite explosive bombs located in his footwear while a passenger on an American Airlines flight.

Reid pleaded guilty to each of the following counts of the indictment: Attempted use of a weapon of mass destruction against one and more than one national of the U.S. while such nationals were outside of the U.S.; attempted homicide of one and more than one national of the U.S. while such nationals were outside of the U.S.; placing an explosive device on an aircraft; attempted murder of one, and more than one, of the 183 other passengers and 14 crew members on board American Airlines Flight 63; interference with flight crew and attendants by assaulting and intimidating Hermis Moutardier, a flight attendant, by use of a dangerous weapon; interference with flight crew and attendants by assaulting and intimidating Cristina Jones, a flight attendant, by use of a dangerous weapon; attempted destruction of an aircraft; and using a destructive device during and in relation to a crime of violence.

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Reid was sentenced to life imprisonment on each of Counts 1, 5 and 6 to be served concurrently, and he was sentenced to 20 years in prison on each of Counts 2, 3, 4, and 7, to be served consecutively for a total of 80 years in prison. On Count 8, the Court sentenced Reid to 30 years in prison to be served consecutively to the life sentence already imposed.

9. (a) USA v. Bouchard Transportation Company, Inc. (2003-2005)

(b) Docket #CR-10087-MBB-ALL
Date of Judgement: 1/5/05
Magistrate Judge Marianne B. Bowler

(c) Lead Counsel: Jonathan F. Mitchell, Assistant United States Attorney
One Courthouse Way
Boston, MA 02210
(617) 748-3100

Lead Defense Counsel: Ronald W. Zdrojeski, Mark A. Walsh, Thomas M. Russo
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
Goodwin Square
225 Asylum St. 13th Floor
Hartford, CT 06103
(860) 293-3537

Bouchard Transportation Company ("BTC"), of Hicksville, New York, pled to an Information charging them with one count of violating the Clean Water Act by negligently causing the discharge of approximately 98,000 gallons of oil into Buzzards Bay on April 27, 2003, when the oil barge its tugboat was towing, traveled outside the clearly marked Buzzards Bay channel and struck rocky shoals lying at a depth of 22 feet. BTC negligently caused the oil spill because its employee, the mate in charge of the vessel, operated the tugboat in a negligent manner and because BTC allowed this individual to remain at the helm of one of its tugboats despite repeated concerns that were raised about his competency.

BTC also pleaded guilty to one count of violating the Migratory Bird Treaty Act by killing protected bird species as a result of this oil spill. According to the Information, the April 2003 oil spill killed hundreds of federally-protected birds, necessitated the closure of thousands of acres of shellfish beds in Buzzards Bay, and affected close to ninety miles of Massachusetts' beaches and coastline.

BTC paid a fine of $10 million and was ordered to comply with several remedial measures designed to prevent future spills. In the sentencing Order, the Court endorsed the U.S. Attorney's Office recommendation that $7 million of the fine be used for eligible wetlands conservation projects in the Buzzards Bay Watershed area of Southeastern Massachusetts.

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10. (a) USA v Serono Laboratories, Inc. (2005)

(b) Docket # CR-10282-RCL-ALL
Date of Judgement: 1/9/06
Judge Reginald C. Lindsay

(c) Lead Counsel: Susan G. Winkler, Mary Elizabeth Carmody, Assistant United States Attorneys
One Courthouse Way
Boston, MA 02210
(617) 748-3100

Lead Defense Counsel: Henry J. Depippo, Melissa B. Tearney
Nixon Peabody LLP
1100 Clinton Square
Rochester, New York 14603
(585) 263-1243

Serono, S.A. together with its U.S. subsidiaries, Serono, Inc., Serono Holding, Inc., Serono Laboratories, Inc. and related entities agreed to pay a total of $704,000,000 ($136,935,000 criminal, $567,065,000 civil) to settle civil liabilities to resolve criminal charges and civil liabilities in connection with several illegal schemes to promote, market and sell its drug, Serostim, used to treat AIDS wasting, a condition involving profound involuntary weight loss in AIDS patients. The global resolution is the third largest health care fraud recovery by the United States.

To resolve the criminal charges, Serono Labortories, Inc. agreed to plead guilty to two counts of criminal conspiracy and to pay the $136,935,000 criminal fine. As a result of its criminal conviction, Serono Labs will be excluded from all federal health care programs for at least five years. Serono, Inc. and all other U.S. subsidiaries of Serono, S.A., will also be subject to a stringent Corporate Integrity Agreement for the next five years.

Serono also agreed to settle its federal civil False Claims Act liabilities for a total of $567,065,000. Specifically, Serono will pay $305,077,000, plus interest, to the United States in civil damages for losses suffered by the federal portion of the Medicaid program, the Veteran's Administration, the Department of Defense and the Federal Employees Health Benefits program as a result of Serono Labs' fraudulent drug promotion and marketing misconduct. Serono will also pay a total of $261,988,000, plus interest, to settle its civil liabilities to the fifty states and the District of Columbia for losses the state Medicaid programs suffered.

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not

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involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While practicing law at Bolles & Pritchard, I was involved in litigation related to the privacy rights of a former patient at Bridgewater State Hospital. The former patient had been depicted in a film "Titicut Follies" which was used, by court order for educational purposes only. The owners of the film petitioned the court almost thirty years after the film had been produced to allow a general dissemination of the file.

While practicing law at the law firm of McGovern & Sullivan, P.C., I represented a nurse who had been exposed during her employment to tuberculosis. She ultimately tested positive without symptoms. She was awarded recognition of the exposure by the Industrial Accident Board. She will be entitled to benefits should symptoms manifest themselves and should she become disabled. Additionally, I assisted my partner in a case for a state ward who had suffered a serious head injury as an infant from an automobile accident. As a result of a physician's failure to diagnose the skull fracture, the injuries were permanent and resulted in the infant being a quadriplegic with permanent brain damage. I also was involved in a radiation-induced leukemia case which was settled against the defendant, General Electric. A Non-Disclosure Agreement between the parties was executed.

At the District Attorney's office I managed a multiple location office, with 125 to 130 direct employees and an additional 20 state police officers. The District Attorney's office is responsible for the prosecution of all crimes charged in Plymouth County. In addition, the office, by statutes, is responsible for the investigation of all criminal deaths in Plymouth County. While serving as District Attorney, I prioritized the investigation of unsolved homicides. During that period all unsolved homicides were re-examined resulting in the charging of 7 defendants in unsolved homicides dating back to the 1970s. From 1995 to 2001, the office investigated 64 murder cases in Plymouth County. During that period, 64 %, or 43 of these murders were solved. Approximately 90 % of those charged with those 43 murders have been convicted.

A significant murder investigation of note by the District Attorney's Office occurred in July 1999. On the evening of July 11, 1999, a young schoolteacher, Melissa Gosule, was reported missing to police after her vehicle broke down and she accepted a ride from a stranger, Michael Gentile. A massive search took place over an 8-day period, covering numerous Southeastern Massachusetts towns. Over 200 state and local police officers participated in the search and investigation. On July 15, 1999, the defendant was charged with kidnapping. On July 19, 1999, after the victim's body was found partially buried in a shallow grave next to a pond in Pembroke, Massachusetts, the Defendant was charged with murder. The victim had been tied up, sexually assaulted and stabbed to death. Extensive forensic and DNA evidence was used at trial. In June 2000, the Defendant was convicted of first-degree murder and sentenced to life in prison.

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While serving as United States Attorney for the District of Massachusetts, I have supervised an office of approximately 200 attorneys and support staff. During my first year as the U.S. Attorney and under an Executive Order from President Bush, I formed the Anti-Terrorism Task Force to combat and prevent future terrorist attacks. In addition to combating terrorism, I also created a unit devoted to computer hacking/high technology crimes which include identity theft, internet auction and credit card fraud, economic espionage, copyright and trademark violations. I also established a Community Prosecution and Crime Reduction Unit which seeks to develop highly targeted gun violence reduction strategies consistent with the President's Project Safe Neighborhood Initiative. Through these efforts, I have attempted and believe I have succeeded in eliciting cooperation amongst federal, state and local law enforcement agencies. Finally, I also created a unit to focus on fraud against our government health care programs. Over the last five years, our office has recovered over $3 billion for the American taxpayer.

As Acting Director of ATF, I oversee the operations of the Bureau and its mission of preventing terrorism, reducing violent crime and protecting the American public. During my tenure as Acting Director, ATF has continued to play an integral role in fighting gang activity and violent crime. ATF-led Violent Crime Impact Teams (VCIT) in 25 cities across the country identify, target and arrest violent criminals to reduce the occurrence of homicide and firearms-related violent crime. In addition to the VCIT initiative, ATF participates with state and local law enforcement and other federal agencies on 110 anti-gang task forces throughout the country.

During my tenure, ATF was the first federal law enforcement agency to agree to deploy additional resources to the New Orleans area in early 2007. ATF has provided six additional special agents to supplement the six permanently assigned to the New Orleans VCIT. ATF also plays a significant role in protecting our military deployed abroad in Iraq and Afghanistan. ATF deploys 5-8 personnel in theater in Iraq to assist with explosives detection and post-blast investigations. The Bureau also recently signed a Memorandum of Agreement with the Department of Defense's Joint Improvised Explosive Device Defeat Organization (JIEDDO) to train six classes of military bomb technicians in 2007 prior to their deployment overseas.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

    I taught criminal law and criminal justice as an Instructor at Massasoit Community College in Canton, Massachusetts from 2000 to 2001. The course involved basic criminal law concepts, including the elements of crimes, burdens of proof and criminal procedure. I do not have a course syllabus.

19. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

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contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None except for future pension from Commonwealth of Massachusetts and The Gillette Company for vested service.

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached SF-278.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth statement.

23. **Potential Conflicts of Interest**:

a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not anticipate any conflicts of interest. In the event of a potential conflict of interest, I will consult with the ethics officials for the Department of Justice and follow their guidance.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow all applicable federal law, rules and procedures governing any such potential conflicts. In the event of a potential conflict of interest, I will consult with the ethics officials for the Department of Justice and follow their guidance.

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24. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While serving as US Attorney, in addition to Department of Justice prohibitions, I was concerned about potential conflicts so I did not participate in pro bono legal work. I did however speak at school events, reentry initiatives, at various clubs and organizations, where I discussed various topics like promoting the D.A.R.E. program, the importance of community involvement in reintegrating those who recently have been released from incarceration, and the importance of public service.

While serving as District Attorney, I did volunteer service as a Director of the Old Colony YMCA and as a Trustee of Brockton Hospital, a non-profit community hospital. I also spent a great deal of time participating in community and school events in an effort to assist in communicating the importance of making good choices and decisions.

While in private practice, I frequently provided pro bono services for financially disadvantaged clients. This included offering legal advice, preparing documents, and representing the client in litigation including criminal, civil and domestic relations matters. I would estimate that I spent on average approximately 16 hours per month providing pro bono legal services.

47206.130

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	7,000.00	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule		Notes payable to relatives	
Unlisted securities--add schedule	307,500.00	Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	18,000.00
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	340,000.00
Real estate owned-add schedule	1,200,000.00	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property		Loan Against TSP	40,000.00
Cash value-life insurance	15,000.00		
Other assets itemize:			
Furnishings	25,000.00		
Jewelry	15,000.00		
Misc.	3,000.00	Total liabilities	398,000.00
		Net Worth	1,174,500.00
Total Assets	1,572,500.00	Total liabilities and net worth	1,572,500.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	no	Are any assets pledged? (Add schedule)	no
On leases or contracts	no	Are you defendant in any suits or legal actions?	no
Legal Claims	no	Have you ever taken bankruptcy?	no
Provision for Federal Income Tax	no		
Other special debt			

FINANCIAL STATEMENT

NET WORTH

ASSETS	VALUE
Schedule of Unlisted Securities	
American Scandia 401K (rollover)	$100,000.00
Aetna Financial Services (Commonwealth of Massachusetts-Deferred Compensation)	$ 35,500.00
Commonwealth of Massachusetts Pension Account	$ 75,000.00
Thrift Savings Plan	$ 90,000.00
Stocks - 2,000 shares PUBCO	$ 1,000.00
2,000 shares ITB	$ 1,000.00
5,400 shares Siebel Systems, Inc.	$ 5,000.00
TOTAL	**$307,500.00**

FINANCIAL STATEMENT

NET WORTH

ASSETS	VALUE
Schedule of Real Estate Owned	
Residence: Abington, MA 02351	$750,000.00
Vacation home: West Tisbury, MA (property held in trust under Long Point Realty Trust. I have 1/3 beneficial interest and am a trustee)	$250,000.00
Vacation home: Twin Mountains, NH (property held in trust under Rose Brook Realty Trust. I have 1/4 beneficial interest and am a trustee)	$200,000.00
TOTAL	**$1,200,000.00**

FINANCIAL STATEMENT

NET WORTH

LIABILITIES	AMOUNT
Schedule of Mortgages Payable	
Mortgagee: Sovereign Bank (approx.) Security: First mortgage on primary residence in Abington, MA	$150,000.00
Mortgagee: North Abington Cooperative Bank (approx.) Security: Equity line of credit on primary residence in Abington, MA	$150,000.00
Mortgagee: Holbrook Cooperative Bank (approx.) Security: first mortgage on vacation home in West Tisbury, MA My 1/3 proportionate share of liability.	$ 40,000.00
TOTAL	**$340,000.00**

U.S. Department of Justice

March 27, 2007

Washington, D.C. 20530

Mr. Robert I. Cusick
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Mr. Cusick:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Michael J. Sullivan who has been nominated by the President to serve as Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. Sullivan recuse himself from participating personally and substantially in a particular matter that has a direct and predictable effect on his financial interests or the financial interests of his spouse, minor children or anyone whose interests are imputed to him under the statute. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Mr. Sullivan has been advised and understands that as a Senate-confirmed Presidential appointee, he is not permitted to have any outside earned income during his service in the position.

We have advised Mr. Sullivan that because of the standard of conduct on impartiality at 5 CFR 2635.502, he should seek advice before participating in a particular matter involving specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Lee J. Lofthus
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

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SF 278 (Rev. 03. 2000)
5 C.F.R. Part. 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209-0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent ☐ Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination ☐ Termination Date (If Applicable) (Month, Day, Year)

Reporting Individual's Name	Last Name	First Name and Middle Initial
	Sullivan	Michael J.

Position for Which Filing	Title of Position	Department or Agency (If Applicable)
	Director, ATF	

Location of Present Office (or forwarding address)	Address (Number, Street, City, State and ZIP Code)	Telephone No. (Include Area Code)
	400 Massachusetts Avenue, NW Washington, DC	202-927-8700

Positions Held with the Federal Government During the preceding 12 Months (If Same as Above)	Title of Positions and Date(s) Held
	Acting Director, ATF 8/31/06 to Present; United States Attorney 9/01 to Present

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	JUDICIARY	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge	[signature]	3-22-07

Other Review (If desired by agency)	Signature of Office Reviewer	Date (Month, Day, Year)
	[signature]	3-26-07

Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	[signature]	3-27-07

Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

☐ *(Check box if filing extension granted & indicate number of days _____)*

☐ *(Check box if comments are continued on the reverse side)*

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers. The reporting period begins at the end of the period covered by your previous filing and ends as the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B Not applicable.

Schedule C, Part I (Liabilities) - The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

Agency Use Only
OGE Use Only

47206.137

SF 278 (Rev. 03-2000)
5 CFR Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Sullivan, Michael J

SCHEDULE A

Page Number: 2 of 7

Assets and Income

BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with start of income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Examples

- Central Jardines Common
- Blue Inc.(Stock), Homestead, State
- Enterprise Equity Fund
- IRA: Heartland 500 Index Fund

Valuation of Assets at close of reporting period

BLOCK B

	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples			x		x		x					
							x					
								x				

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

BLOCK C

	Type						Amount												Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000					
Examples	x						x												Tax Exempt Dividends $1,500	
									x											
							x													
1 Long Point Realty Trust, Trustee 1/3 beneficiary, Martha's Vineyard, MA-real prop					X															
2 Rose Brook Realty Trust, Trustee 1/4 beneficiary, Twin Mountain, NH-real property					X															
3 New England Financial-Zenith Accumulator 401K State St. Research money market series				X																
4 New England Financial-Zenith Accumulator 401K Fidelity VIP Equity-income portfolio			X																	
5 New England Financial-Zenith Accumulator 401K David Ventura Value				X																
6 New England Financial-Zenith Accumulator SEP IRA-capital growth series			X																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate

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47206.138

SF 278 (Rev 01/2007)
5 CFR Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Sullivan, Michael J

SCHEDULE A continued
(Use only if needed)

Page Number: 3 of 7

Assets and Income

Valuation of Assets at close of reporting period

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item

	BLOCK A	BLOCK B										BLOCK C												
												Type						Amount						
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	Over $25,000,000	Other Income (Specify Type, e.g., Partnership Mutual Fund)	Date (Mo., Day, Yr.) Only if Required
1	New England Financial-Zanith Accumulair SEP IRA-State St. research money market series	X												X							X													
2	Comm. of MA-deferred comp. plan-Administrator AETNA State St. SEP 500 Flagship Fund			X										X							X													
3	Comm of MA-deferred comp.-plan Administrator AETNA Fidelity Growth Co. Fund			X										X							X													
4	Comm. of MA-def. comp. plan Admin. AETNA Active Sm. Cap stock portfolio Wellington Mgmt.			X										X								X												
5	Comm. of MA-pension acct. (Defined Benefit plan)			X																	X													
6	PUBCO (PUBO)		X																		X													
7	Siebel System, Inc.		X																		X													
8	Northwestern Mutual Life Insurance Co. (whole life)			X														X						X										
9	The Gillette Company Trust Fund (defined benefit plan) VALUE UNASCERTAINABLE																				X													

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name

Page Number 4 of 7

SCHEDULE A continued
(Use only if needed)

Assets and Income

BLOCK A

Valuation of Assets at close of reporting period

BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

BLOCK C

	Assets and Income	Valuation of Assets at close of reporting period															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income Type & Amount	Date (Mo., Day, Yr.) Only if Required
1	333 Shares of EMG	X																		X												
2	American Skandia-401K (rollover of N.E Financial) Morgan Stanley stock portfolio					X														X												
3	Includes the following stocks. 2600 Shares C-Corp (CCBL)			X																X												
4	600 Shares CitiCorp				X															X												
5	2000 Shares Harmonic Inc. (HLIT)		X																	X												
6	420 Shares J.P. Morgan Chase & Co.		X																	X												
7	2000 Shares Seachange Int'l (SEAC)		X																	X												
8																																
9																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Sullivan, Michael J		5 of 7

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)														
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
	Example: Central Airlines Common	x			2/1/09			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260; and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
	Examples: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE C	Page Number
Sullivan, Michael J		6 of 7

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (*Name and Address*)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	Mint District Bank, Washington, DC	Mortgage on rental property, 2634 Ave	1995	8%	25 yrs			X								
	John Jones, Esq., Washington, DC	Promissory note	1998	10%	on demand					X						
1	Sovereign Bank, Whitman, MA	1/3 oblig. for mortg. on Martha's Vineyard Property	2003	5%	15 years			X								
2	Northwestern Mutual Life Ins. Co	loan against life insurance policy	2000	8%	interest		X									
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00	Doe Jones & Smith, Hometown, State	7/85
1	Commonwealth of Massachusetts, deferred compensation plan, vested eligible at age 55	Commonwealth of Massachusetts	07/95
2	Commonwealth of Massachusetts Pension Account (defined benefit plan) vested-eligible at age 55	Commonwealth of Massachuotts	1/95
3	The Gillette Company, defined benefit plan, vested-eligible at age 65 formula-best five of last 10 years	The Gillette Company, Boston, MA	10/83
4	Upon termination from each of the above neither I nor my former employer made contributions		
5			
6			

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OGE Form 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
Sullivan, Michael J		7 of 7

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Post on Held	From (Mo./Yr.)	To (Mo./Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit educational	President	6/92	present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Long Point Realty Trust - Martha's Vineyard, MA	real estate trust	Trustee (no fee)	05/1993	present
2	Rose Brook Realty Trust - Twin Mountain, NH	real estate trust	Trustee (no fee)	08/2000	present
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith) Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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Senator KENNEDY. OK. Well, thank you. Thanks very much, and particularly for Senator Kerry's very extensive description of your activities in the U.S. Attorney's Office. Great credit to you.

On Monday the FBI issued its annual report on crime in the United States, and the report showed that last year, for the second year in a row, the number of violent crimes in America increased. Property crime was down. Violent crime was up. And that increase is disturbing. It is obviously disturbing to everyone in Boston, in Massachusetts; it is disturbing around the country.

Violent crime had been falling since 1992, but it has been rising again. We had seen the situation from 1994 to 2001 that violent crime decreased by 26 percent, and the murder rate actually went down to 34 percent during that period of time. Also during that period of time, we had developed two very important programs: the COPS programs, community policing programs; and the anti-gang programs, what they call the Byrne grants, which I am sure you are familiar with. Those two programs have effectively dried up, the community policing program by more than 94 percent, and the anti-gang grants are virtually eliminated.

I am just wondering if you might be able to help comment about these programs, whether you were able to see them, observe them, whether you thought that they had value to them. I remember when we had that absolute tragedy in Boston, the Morningstar Baptist Church, and the community came alive and there was enormous outreach by the black ministers, the coalition that came together, educators. They brought together virtually all of the sort of law enforcement assets, and the development also during that period of time of the COPS program up there, Byrne grants coordinating, and we saw this dramatic reduction in youth crime, youth violence.

But this kind of increase after what we saw this last week, I am wondering if you would comment from your own experience about what is happening up there and what your own observation is. I say that against a background—we had a very interesting session earlier today with the U.S. Conference of Mayors, with Mayor Palmer, Douglas Palmer, who is the mayor of Trenton, who is the President of the U.S. Conference of Mayors, and the Conference of State Legislatures and a number of individuals that were in sort of law enforcement—juvenile correctional administrators, correctional association, some of the people that were—Invest in Kids: Fight Crime, American Probation and Parole Association, Coalition for Juvenile Justice. And they gave us a rather ominous description about what is happening in the inner cities, not only in the major cities but also in the medium-sized cities and the smaller cities, and their real concerns about violence and crime and what is happening to a number of the youth.

I would be interested in what comments you might make about that.

Mr. SULLIVAN. Thank you, Mr. Chairman. I know the issue concerning violent crime is not a new concern or a ne issue for you. I know you have worked at partnerships between Federal, State, and local law enforcement during the course of your tenure in the United State Senate.

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Boston I think has a tremendous record of success in terms of partnerships. We have the Boston program called Boston Ceasefire that was developed as a result of some real struggles concerning violent crime in the 1990s. It has had nationwide replication for the program that we now call Project Safe Neighborhood.

When I look at the program that the President, the administration has been supporting to address gun crime through Federal investigations and prosecutions and expanding it to violent crime over the last 6 years, I see it evolving out of two programs: Boston Ceasefire and Richmond, Virginia's Project Exile, two very successful programs.

The strength of Project Safe Neighborhood is the result of its partnerships with State, local communities, not strictly law enforcement even though law enforcement plays a critical role. The enforcement side obviously is critically important to send the right deterrent message, but we have to do more than just the deterrent message of enforcement and long prison sentences. We have to find ways to reach especially that at-risk 14- to 25-year-old group. And I think with messaging through Project Safe Neighborhood, we are hoping to be more successful in the future.

I know there is a concern with regards to an increase in violent crime in this most recent report. We still remain, fortunately, almost at a historical low. So ATF obviously is partnering with our local partners to address violent crime.

Senator KENNEDY. Well, we in Boston have gone from—in 1990, we had 192 homicides in Boston. In 1999, we were down to 31. In 2005, it is up to 75, and the number is growing each year. And I think what we are asking here is there are two very important programs: one was the COPS program and the anti-gang programs. And they are basically—I found that they were very effective up in Boston and in a number of the communities—Springfield, Worcester, other communities, large and small. They have been virtually emasculated in terms of their funding, and I am trying to find out how much weight we ought to give to the value of those programs as we are looking at now at the funding of these programs. We do hear from local law enforcement people that those COPS programs and the Byrne programs, particularly the anti-gang programs, where they were able to detect the bad apples in these gangs and give focus and attention to the real troublemakers and really reach out in the communities, and they were able to separate individuals who needed to get back to school or training programs or other kinds of after-school programs, whatever.

But we have seen a continuing rise of violence in—we have seen it in particular details, I know in Boston and in Massachusetts, and we have seen it in the rest of the country. How much do you think we ought to attribute that to the fact that we basically have emasculated the COPS program and the anti-gang programs?

Mr. SULLIVAN. Senator, Mr. Chairman, as I understand the question, is funding important to local police departments, local public safety officials, and I think clearly the answer to that question is yes. I think communities have successfully used Federal grant programs to address a range of challenges, including violent crime. And I think part of the success in terms of reducing, you know, violent crime has been that partnership between the Federal, State,

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and local law enforcement agencies, in some ways through funding, in other ways through working investigations more collaboratively.

You know, one of the things we do beyond just the funding piece is making sure that we are using other Federal resources and technology to assist local law enforcement. Obviously, funding plays a significant role, but as I understand it, you know, Federal support for local law enforcement has been about flat at about 4.5 percent traditionally. Now, it depends on which program we are talking about or how they receive those fundings. And I know local departments appreciated the Byrne funding and the COPS funding, and it assisted them to bolster their resources in the time that they were receiving that funding.

Senator KENNEDY. Let me, and then we will move on to some other areas. Even though the NAPE program, the national evaluation on education, showed that Massachusetts schools were No. 1 in the country, we all take pride in that, nonetheless, there is also this combination of in other areas, I think probably true in some of the cities in Massachusetts where we have school dropouts—you are having the return of career criminals, and we have the proliferation of drugs that are out there in the community, and that forming sort of a social dynamite in these communities. I don't know what—my own sense is that the poverty area, the poverty in some of these communities in inner cities is worse than it was several years ago. My observation. I think in some areas it is true; other areas it is not.

But what insight can you give us about how to try and sort of deal with some of that kind of social dynamite? I think we are finding out in a number of the communities in other parts of the country—in Cleveland, they have about 30,000 kids a day that do not go to school in the school district of probably 60,000, 70,000 children. It is almost half the children on these things. And there is increasing violence that is taking place.

What is your sense about what we can do? What are these factors? How would you deal with those? Obviously, you have to deal with them appropriately for—those people that are involved in the violence ought to be dealt with appropriately, and also some of these other kinds of causes of this disruption.

Mr. SULLIVAN. Mr. Chairman, obviously, as you have pointed out, the problem is very complex, but there are some common denominators, and you talked about them. Obviously, education is critically important. Good role models and mentors is critically important, as well as especially with that at-risk group.

I will give you one example that was developed while I was district attorney of Plymouth County in Massachusetts, and a great deal of credit has to be given to the Brockton Public School System that faced significant attrition, serious unexcused absences from school that led to truancy, that led to juvenile delinquency behavior. They empowered juniors in the high school to be mentors for the at-risk third and fourth graders and were able to reduce unexcused absences from school by over 70 percent for that population. Kids in school performed better in school, have better options and opportunities going forward.

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So I think mentoring, either through the school program, Boys and Girls Clubs, YMCAs, giving kids alternatives other than just life on the street, goes a long way to reducing crime.

Senator KENNEDY. Those are good suggestions.

Let me go into some particulars here now. One is on the Tiahrt amendment. The amendment prevents ATF from publishing reports that use source data to analyze the flow of guns at the national level. You are familiar with the groups that have spoken out against it, and then we have got an additional amendment, the Shelby amendment, recently added, that keeps the restrictions in the bill more restrictive than existing. Under the Shelby amendment, law enforcement officers would be required to certify the reasons why they are requesting gun trace information.

In the May 2nd op-ed in the Boston Herald, you defended the policy of limiting the release of gun trace data stating that the restrictions merely codify ATF's longstanding policy of sharing data with law enforcement agencies for the purpose of conducting criminal investigations.

Can you expand on or give us your reasoning for that or provide examples in which the release of crime gun trace information has compromised a police investigation or endangered an officer or witnesses?

Mr. SULLIVAN. Mr. Chairman, I cannot give you a specific example where the release of crime gun trace information has compromised an investigation because I am not aware of an instance where we have provided that information to a law enforcement agency and they have disseminated it to the public. But obviously from a law enforcement perspective, during the course of an investigation, you want to try to control the flow of the information as best as you possibly can. Recognizing that—

Senator KENNEDY. But we are not talking about a particular investigation, you know, in terms of a particular investigation, but we are talking about information generally that ought to be out there, that could be valuable in terms of the public domain.

Mr. SULLIVAN. And I think that there are two constituents that we would be talking to with regards to gun tracing information: obviously, law enforcement, to assist them in their ongoing investigations, or potentially to open up investigations. There is nothing that prevents me as the Director of ATF from sharing tracing information with law enforcement agencies that have an impact or potential impact in their jurisdictions.

The public dissemination, which we have recently begun to share once again, allows us to take a look at tracing information differently without identifying the source, the original source of the recovered crime gun.

So I think in some ways ATF, because we have not clearly explained, you know, information that is available both to law enforcement and to the public, there has been misinformation provided concerning the Tiahrt amendment. The Tiahrt amendment just keeps the information law enforcement-sensitive. That is how I read the Tiahrt amendment, allowing us to share with law enforcement, and in limiting the sharing of some information, not all of it, to the general public.

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Senator KENNEDY. Well, I can see, as I mentioned, with regard to a particular case, it seems less persuasive when you are talking about the general public gaining information. As I understand, though, the ATF recently released the State-by-State reports, the number of guns recovered between January 2006 and December 2006. So, you know, I commend the ATF for disseminating that information. It is definitely a step in the right direction.

Why was the information released?

Mr. SULLIVAN. Well, it was released because when we looked at the Tiahrt amendment, there was nothing that prevented us from releasing the information. It became apparent to me there was a general interest in the part of the public in terms of what was happening with regards to recovered crime guns in terms of where the sources are. I think, you know, as a public agency, if we have information that is not going to adversely impact our ongoing investigations or potential investigations, I think the public should have access to the information.

So we began releasing it. It is information that we released historically prior to Tiahrt, maybe not in the same format, but it is something we are going to continue to provide. And beyond that, we have provided even more detailed information to law enforcement agencies to assist them in their ongoing investigations or to give them the opportunity to look at potentially opening up investigations that will enhance public safety within their communities.

In 2006, James McNally of ATF said that the Tiahrt appropriations restrictions prevented ATF from releasing to the public "any information derived from tracing of firearms." And then in an AP article, 22 February 2006, regional ATF spokesman John Hageman said ATF could not provide the public statistics breakdown on guns sold in crimes. And you are, as I understand it now, reading the Tiahrt amendment as not prohibiting the release of summary reports like the ones ATF has recently made public, available to the public on its website.

Mr. SULLIVAN. That is correct, and I think part of the confusion, Mr. Chairman, is the point that you just made. Even internally within ATF, I think there was, you know, a wide range of opinions in terms of what we could and could not do. And I can understand and appreciate, you know, why Congress and organizations like IACP and FOP may have been confused in terms of what we could or could not release.

Senator KENNEDY. We have been joined by Senator Schumer and Senator Whitehouse, and we would welcome you. If you desire to make a comment, and—

Senator SCHUMER. Mr. Chairman, I have some comments and some questions.

Senator KENNEDY. Sure, please. We have an amendment on the floor, but I have not been notified that we have got a time agreement. So we will be here. I will yield to you. And then if it looks like we are running out of time, I will ask the courtesy to be able to come back to it.

Senator SCHUMER. It would be my pleasure to extend the Chairman any courtesy he wishes.

Senator KENNEDY. He is not always like that.

[Laughter.]

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Senator KENNEDY. I do not want the record to suggest that this magnanimity—

Senator SCHUMER. I am surrounded by Red Sox fans, and I can only—

[Laughter.]

Senator SCHUMER. Anyway, Mr. Sullivan, thank you for being here today, and I want to commend you for your many years of service to the Government as a U.S. Attorney, district attorney, and State representative. And having been both a Federal and State prosecutor, you should know as well as anyone how gun violence and firearms trafficking is devastating communities, not just big cities like New York but even small towns across the country.

I also hope you will agree with me that ATF's ability to trace gun crime data is one of the most important powers. When I was in the House, I worked long and hard to get tracing done in the Clinton administration, and law enforcement regarded it as an extremely valuable tool.

To this end, in my judgment, we should never unreasonably tie that hands of law enforcement when it comes to sharing and tracing gun data. That is why I am anxious to hear your views about what has been called the Tiahrt amendments. Mayor Bloomberg, mayor of our city in New York, has worked hard on this amendment, trying to get it undone. He has expressed to me particular interest in both your views and in this hearing.

Now, as you know, about 1 percent of the Nation's licensed gun dealers account for 57 percent of the traced gun crimes. You know, we discovered this in regards to New York, as I said, in the 1990s, and it is true all over the country. There are a few bad apples that spoil the whole bunch. There is nothing wrong with the vast majority of the country's gun dealers. But we have to find a way to go after those few bad apples.

Yet, since 2003, Congress has attached riders to the DOJ appropriations legislation that bars the ATF from using money to share information from the trace database without almost anyone—researchers, local governments, even Congress. And so even though the police can trace a specific gun used in a specific crime, they cannot look at patterns.

If you talk to Ray Kelly, our very fine police commissioner, he will tell you this would be invaluable in helping in New York. And one example hit very close to home recently. This past July, a wonderful man, an NYPD detective, Russel Timoshenko, a man born in Russia, just wanted to be a policeman, defend his communities, this wonderful guy, he was fatally shot in my hometown, Brooklyn, New York. Several press accounts reported he was shot by an illegal gun that came from Virginia. In fact, press accounts reported that this dealer had previously been indicted for his gun sales. That gun shop is, thankfully, now closed. That dealer has been stripped of his license.

It is my understanding that the NYPD asked the ATF for data about which dealers in Virginia supplied the most crime guns, like the one that killed Officer Timoshenko, so that they could identify the traffickers. It is my understanding that ATF refused the request for data, citing the Tiahrt amendment. And it is nice that you are doing these State-by-State studies, but that does not do a

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thing to help Ray Kelly and the NYPD find out which particular gun shops seem to look the other way, allow guns to be sold illegally, guns that end up killing police officers, civilians, and doing such harm.

So this is an outrage. If it is true, it is an example of gun laws gone wrong. Anyone—anyone—who has been in law enforcement for a long period of time knows how valuable this is and what a dumb idea the Tiahrt amendment is, creating sort of this bogeyman out there that somebody is going to take away people's guns. And in the meantime, these few bad apples get away with literally murder, or at least aiding and abetting murder through the weapons being sold.

So I want to hear your thoughts on this case and others like it. I hope you can freely tell us today what your views are on the Tiahrt amendment and what you can do as the head of ATF—which has always been at the forefront. The ATF, the leaders of ATF, even in the Clinton administration, were out there, getting some people in the White House upset. But their dedication to getting illegal guns off the streets, guns out of the hands of criminals, is something I always admired.

I hope you can give us your views today on the most recent Tiahrt language passed by the Senate Appropriations Committee, which even may subject law enforcement officers to jail for sharing trace data. In my view, that is a horrible policy to subject police officers to prosecution for making trace data requests. So I would like to hear your views on this issue.

We are just 5 months removed from the tragic events at Virginia Tech. The country knows all too well what happens when our gun laws fail. I have sponsored legislation here in the Senate that is backed by the NRA—being considered by the Senate as we speak; Senator Leahy and I have an amendment on the floor—to help modernize our background check system. We cannot let more people slip through the cracks and do harm to others. But stopping gun violence requires a broader national effort, and I hope that as ATF had, you will be able to help lead that process, not join in the obstruction.

So I want to thank you for coming, and I have a few questions relevant to that, if I might, Mr. Chairman.

Senator KENNEDY. Go ahead.

Senator SCHUMER. First, ATF has published reports—these you have—that the majority of crime guns recovered from New York City are guns that originated from another State. In other words, the idea that lets the States do it does not make sense to us in New York. We have strong laws, but the guns come from out of State. So what assurances can you give me that those communities that are impacted by the influx of these guns are being addressed by ATF? What is ATF doing about crime guns coming from a limited number of dealers out of State into cities like New York—and my guess is Boston and Providence as well—and doing harm?

Mr. SULLIVAN. Thank you, Senator. Thank you for your thoughts, and this is obviously a significant concern to ATF—the criminal use of firearms. Obviously, it creates harm to individuals, creates harm to communities as well.

The issue concerning firearms trafficking is at the forefront of ATF's efforts to address violent crime. I am committed to sharing with law enforcement all the information that is at the disposal of ATF to assist them in addressing violent crime—violent crime being committed by guns.

The sharing of information is going to continue to happen. I am optimistic that there will be even more information available than has been provided in the recent past. I still believe it is consistent with the expectations of the Tiahrt amendment. My reading of the Tiahrt amendment does not preclude me from sharing information with Commissioner Kelly, even aggregate information that deals with tracing of weapons from outside of New York City that are recovered in New York City. This—

Senator SCHUMER. Excuse me, sir. Why was the request about Virginia gun shops after the Timoshenko murder turned down?

Mr. SULLIVAN. I am not sure, Senator. I would be happy to—

Senator SCHUMER. Can you give me an answer in writing on that?

Mr. SULLIVAN. I would be happy to check into the reason for that refusal for information. But from my reading of the Tiahrt amendment and the practice that we have in place presently if there are crime guns recovered in New York, and if they are looking to do aggregate type of reports to see if there is a pattern between that source State and the demand city, we are going to provide that information.

Senator SCHUMER. The relevant information they want is not on a State basis but on a gun shop basis.

Mr. SULLIVAN. Yes.

Senator SCHUMER. Do you think the Tiahrt amendment gets in the way of doing that?

Mr. SULLIVAN. No, I don't.

Senator SCHUMER. That would be significant.

Mr. SULLIVAN. I don't, Senator, but by the same token, at the same time, let me also state that because a gun is traced back to an FFL, it would be unfair to assume that the FFL has committed any type of crime.

Senator SCHUMER. But if it is over and over and over again, it would then importune, you would think, ATF to check it out and see if that dealer is obeying the law.

Mr. SULLIVAN. Absolutely. Or to encourage the dealer to take some additional steps that could be helpful to them.

Senator SCHUMER. OK, because what you are saying here sort of contradicts the failure to give the information Commissioner Kelly asked for about Timoshenko.

Mr. SULLIVAN. And, again, Senator, I will respond in writing to that question.

Senator SCHUMER. OK.

Mr. SULLIVAN. But I have specifically asked, through IACP, through my relationships with major city chiefs, through reaching out to our partners, have there been any instance in which you have requested for law enforcement purposes gun tracing information and been refused, and I have not had a chief come to me or a commissioner come to me and say, "Yes, I needed this information to enhance public safety in my community."

Senator SCHUMER. Look, this is very important and could be a major breakthrough, so I look forward to the answer in writing. I am not going to press you any further on that, but I do have a few more questions.

I would like to ask you about your thoughts on the newest version of this language that has passed the Senate Appropriations Committee; that is the Shelby amendment. The language now has an explicit prohibition on law enforcement bodies sharing trace data with one another to detect share trends and problem traffickers, and the language also has a provision that requires law enforcement to certify under the penalty of prosecution that the information is sought solely in connection with a bona fide criminal investigation or bona fide criminal prosecution.

Before I proceed, I should ask: Do you support the inclusion of either of these provisions? You seem like a nice guy, but I have to put you on the spot here because this is such serious stuff.

Mr. SULLIVAN. Senator, I apologize. I have not had an opportunity to study that language. I would be happy to take a look at it and respond to the Committee.

Senator SCHUMER. Can you get me an answer in writing within a week?

Mr. SULLIVAN. Yes. But I will say, Senator, in terms of the practice at ATF, the presumption has always been that the request for tracing information by a law enforcement agency was for legitimate law enforcement purposes, no different than a law enforcement agency asking for criminal history as part of an ongoing probe or an ongoing investigation.

Senator SCHUMER. Well, what we found is what they are doing is, if it is a specific request, yes; but if they ask aggregate the request so we can see which gun shops seem to be the problems, this is driving Mayor Bloomberg to the point—well, in a good way, crazy. We do not get those answers. And some say the Tiahrt amendment is what is blocking it. You are saying it may not block it. And we will wait for the answer in writing because if it does not block it, that would be great and a big breakthrough, as I mentioned.

I would also ask you to answer in writing, because it follows: To what extent would the passage of these provisions—the Shelby amendment—hamper ATF's ability to slow the movement of illegal guns in this country? OK? I will send these to you immediately so you do not have to write them down.

Now, on certification—and, Mr. Chairman, I think this is my last series of questions here. Well, there is one more after this, but I am taking too much time, please stop me.

On certification, we all know that certification provisions would expose police to jail time if the use of the trace data for something is more than a particular investigation, such as analyzing trends in the movements of illegal guns.

Just in general, given your law enforcement background—even as a legislator, I understand you were very serious about law enforcement. My roommate—and I do not know if you served at the same time as Bill Delahunt, who speaks very highly of you—when he is home. How do you feel—he is single. He is single. How do you feel about—

Senator KENNEDY. He is my Congressman, you know, He does not do a very good job in plowing the driveway.

Senator SCHUMER. Senator Kennedy, it is true, I must admit, he has invited me on many occasions to his house. We have not invited him to our house. We do not have a driveway.

[Laughter.]

Senator SCHUMER. It is a row house. But in any case—now, somehow I am losing my train of thought here. How do you feel—

Senator KENNEDY. It is the other page.

[Laughter.]

Senator SCHUMER. How do you feel about the possible practice of subjecting law enforcement officers to possible jail sentences every time they make a trace data request?

Mr. SULLIVAN. Well, I would hope that that is not the objective of any certification. Obviously, again, the presumption is that law enforcement is requesting and using the information for legitimate law enforcement purposes, and, you know, certainly ATF wants to be extremely supportive to assist local law enforcement in their efforts to improve public safety. And in some instances, this opens up the door for very important investigations.

Senator SCHUMER. OK, good. Do you believe that prosecuting officers and prosecutors for making trace data requests is sound policy in general? I am not asking you on the explicit amendment.

Mr. SULLIVAN. As a matter of policy, no. But certainly if—

Senator SCHUMER. Thank you.

The Justice Department has said in the past that creating criminal penalties based on what police do with trace data could create "a chilling effect on law enforcement" and would have "adverse consequences" for law enforcement operations and safety. This was in a letter of May 8, 2006, from Will Moschella—he is the former—is he still there? Well, he was Assistant Attorney General at that time. It was sent to Representative Sensenbrenner. Do you agree with that statement?

Mr. SULLIVAN. Senator, I am sorry. Could you repeat the statement again?

Senator SCHUMER. In the past that creating criminal penalties based on what police do with trace data could—this is the Justice Department—could have "a chilling effect on law enforcement"—that is the quote from the letter—and, second, would have "adverse consequences" for law enforcement." Do you agree with that?

Mr. SULLIVAN. Yes, I think it could.

Senator SCHUMER. Thank you. Would you be concerned, as the Justice Department was, that requiring similar certification would have an adverse effect? You have answered that. OK. So we have that.

Just one more, if I might, and that is on sharing. This is to the Senate bill's prohibition on law enforcement sharing of trace data. As you know, the Senate's language says that law enforcement can only share data with another law enforcement agency only when that sharing, as I mentioned, is in connection with a particular investigation. In an op-ed piece you wrote in the Boston Herald earlier this year, you made the argument that the current Tiahrt language has no limitation on sharing between law enforcement agencies after they get the data from ATF. Here is what you wrote, just

to refresh your recollection: "Our agency routinely shares trace data with State and local enforcement in supportive investigations within their respective jurisdictions. Once a requesting agency receives sensitive trace data from the ATF, it becomes the agency's data to share with other law enforcement entities as it deems appropriate."

Are your comments compatible with the Senate language?

Mr. SULLIVAN. My comments are related to the Tiahrt amendment as it presently exists.

Senator SCHUMER. And this is a modification. This is the Shelby modification. I do not think they are consistent, do you?

Mr. SULLIVAN. I would have to take a look at the—a little bit closer.

Senator SCHUMER. Could you get me an answer in writing on that?

Mr. SULLIVAN. I would, Senator.

Senator SCHUMER. Thank you. OK. These are all—I mean, obviously this amendment does a lot of damage. Obviously, as a law enforcement person—at least I am making my judgment here—it seems you sort of know that. And, obviously, there are probably political considerations high, high up in the administration up there that you have to deal with.

I am hopeful that given your law enforcement background, given your caring about police officers and their safety, which we all care about so much, that you are going to find ways to reconcile in a positive way those two things, and I am hopeful that you will. And I look forward to those answers in writing.

Mr. SULLIVAN. Thank you, Senator.

Senator SCHUMER. Thank you, Mr. Chairman.

Senator KENNEDY. Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Chairman.

Mr. Sullivan, how are you?

Mr. SULLIVAN. Good, thanks. How are you, Senator?

Senator WHITEHOUSE. It is good to be with you. I want to begin by expressing my compliments to the organization that you are about to, with any luck, officially become the Director of. As you may know, I was the United States Attorney in Rhode Island for 4 years and worked extensively with the ATF office there and came to have enormous respect for that agency. It was sort of like the Jeep of the different Federal agencies. It would go anywhere, very low maintenance, tough and reliable, and particularly in your U.S. Attorney's hat, I am sure you are well aware of the law enforcement turf battle problem that can emerge and can become really unpleasant. The organization always set the tone for being very cooperative and very supportive of other organizations, and passing with flying colors what people might call the "Plays well with others" test. And I am sure you aware of this already, as you have been in an acting capacity for some time. But I think the hearty and willing and enthusiastic nature of the agency is something that you can protect and value and treasure and pass on to those who follow you. I really think it is a special agency in American law enforcement, and I know I am preaching to the choir here. But I wanted to have the opportunity to say that after the good experi-

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ences that I had with the hard- working and able agents in Rhode Island.

One of the areas that I took a great deal of interest in and thought had enormous promise was originally called—i want to say Ceasefire and eventually it became NIBIN, and it was a system for preserving computer imagery of brass casings and of recovered bullets, and in some cases of test- fired bullets of crime guns, so that you could begin, in the same way that a fingerprint connects the dots between a criminal and his presence at a crime scene, could begin to connect the dots between the bullet left behind and, say, the body of a crime victim with a known weapon. And it struck me that we were at the stage in that technology—you know, early on, fingerprint technology was a way to prove something that you had already surmised somewhere else, and you could get the expert in and say, yes, that print matches that print, and you could link through it. But you could not really search through it because the technology was not there. Now you can put in a fingerprint image, and you can search through the FBI database and, boom. And the search function has proven so invaluable in solving crimes. And what I saw was the NIBIN technology provided the capacity to begin to build that database. And it is obviously never going to be an effective database until it reaches critical mass and there is enough information in it that it becomes valuable.

I have been obviously out of touch with that database for the past couple of years, and I noted with some interest that the Inspector General of the Department of Justice in 2005 did a report on that program and indicated, among other things, that there was a considerable dissatisfaction with the local imaging machinery that I actually remember shopping around to our local police departments. A great deal of it had been returned, and the entry point into the system was a bit compromised as a result of that. And, second, and perhaps relatedly, there was a considerable backlog of at that point 4,900 collected bullets, 10,800 collected cartridge casings, 10,900 bullets collected from test-fired firearms, 5,300 cartridge casings collected from test-fired firearms, and 9,700 firearms awaiting test-fire.

Can you give me an update on where that program is now and whether the report from the Inspector General has been responded to? And if so, how? And if you do not mind, also your view on where the NIBIN system fits into ATF's future, and do you see it as a valuable part of the law enforcement armament.

Mr. SULLIVAN. Senator, thank you very much for your introductory remarks about the Bureau of Alcohol, Tobacco, Firearms, and Explosives. I had very similar experiences before I came on board as the Acting Director of ATF in my capacity as United States Attorney and prior to that as district attorney. So it has been a real honor for me to serve as the Acting Director, and I still look at ATF as being the Jeep that you described. And we continue to get the job done with very limited resources, but in a very robust way.

The NIBIN program continues to be fully supported by ATF in terms of the deployment of the technology, and I think we have made some advances over the last several years. And, in fact, there is a next generation of technology that hopefully will be even easier to utilize going forward. I couldn't tell you off the top of my head,

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you know, how many images we now have in the system. Hopefully we are close to if we have not already achieved that critical mass. But as you will understand as a former prosecutor, the imaging allows you to link up projectiles or shell casings with casings that may have been recovered in another crime scene.

Senator WHITEHOUSE. And, more importantly, not just to link as a point of proof; it allows you to search so that crimes you had no idea were connected, you can suddenly realize, wait a minute, this was the same—

Mr. SULLIVAN. Exactly. And we do that first on a regional basis, and then we have the ability to go beyond the region in some cases, if we think that there is some value in doing it, looking at it from a national perspective as well.

The challenge, I think, at the local level is the program is supported, obviously, through local resources as well with regards to some of the technicians that are responsible for doing some of that processing work. ATF supports the program with the technology and paying for the technology and the upkeep and the maintenance of the technology and some of the training costs as well. But a good portion of the resources are a commitment at the local level.

I think the challenge going forward is recognizing at this point in time that it is really a sole-source provider with regard to the technology, and you have to ask yourself the questions whether or not that is a good position to be in. But we can only go to one vendor. As supportive as the vendor has been in terms of our needs, I think it would be very healthy to look to see whether or not there are other potential opportunities to take it to the next generation to assist law enforcement. But it is very supportive by ATF. We spend a significant portion of our budget supporting local law enforcement. They see it as a very valuable tool on the investigatory side, and I think if there was any interest on the part of ATF—and there is none—to back off, I am sure Members of Congress would hear directly from their constituents.

Senator WHITEHOUSE. Well, I am actually worried that you would be hearing the other way. Things like the Tiahrt amendment are evidence of a considerable pressure that advocates in the firearms industry put on law enforcement in some of these areas. Is it your experience that there has been any political pressure put on your agency to back off on the deployment of this program because it might look to some people like it is a way of building a firearms database or doing something that interferes with somebody's ideology?

Mr. SULLIVAN. No, not at all, Senator.

Senator WHITEHOUSE. Good.

Mr. SULLIVAN. In fact, we have had encouragement to get more equipment out to the field in parts of the country where maybe the equipment is not easily accessible in some of the major urban area.

Senator WHITEHOUSE. Good. Well, that is reassuring to hear. If you do not mind, I would like to make, with the Chairman's permission, a request for the record, if you could respond in writing in a little bit more detail. I am interested in knowing where the backlog figures have gone since the 2005 Inspector General report. I am interested in knowing what the current size of the different databases are for cartridges, for bullets, for firearms. I am inter-

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ested in knowing for each one what your agency believes to be the kind of critical mass number where it really becomes profitable for a local police department to take the trouble to record the cartridge and go and the likelihood of a hit kind of becomes realistic enough that they are no longer building for the future but they see it now as a live and immediate and real asset in meeting their law enforcement responsibilities. And, finally, I would like to know, going out 2 or 3 years, what the department's own performance goals are for developing those databases and getting to the numbers that you think are important. What numbers have you set for yourself and why? And then that gives us something to work with, and if it looks like those are unmanageable and perhaps additional resources would be helpful, then perhaps I could help, with your help, convince my colleagues to provide additional resources.

Again, just in conclusion, my experience has been that the national fingerprint database has been a tool of inestimable value to law enforcement, and really nobody in their right mind could argue that it did anything than serve the public's interest to have that information collectable, searchable, and provable in court at the appropriate times. And for us to be able to build a similar database for the fingerprints, if you will, of firearms on crime weapons to me should be a significant priority, and I would like you to count me as somebody who is keenly interested in helping ATF make that happen and accelerate that process.

Mr. SULLIVAN. Thank you, Senator.

Senator WHITEHOUSE. Thank you, Mr. Sullivan.

Senator KENNEDY. Thank you.

We have been joined by Senator Cardin. I just have a few questions, and then I will yield to the Senator. I am going to go over to the floor. I have about three or four different topic areas I would like to get your reaction to.

One is on the assault weapons ban, and I just was interested also if you have a position on the assault weapons ban, and also any comments about these high-capacity magazines. We have seen, you know, these tragedies that are taking place in schools and colleges. One of the worst shootings in recent history, the student killing spree that lasted 9 minutes, 100 wounds—170 shots were fired, one shot every 3 seconds. In the end more than 50 students and staff and faculty were injured or killed.

Have you taken a position on the assault weapons ban?

Mr. SULLIVAN. Mr. Chairman, the administration, as I understand it, along with the Department of Justice, would support reinstituting the assault weapons ban.

Senator KENNEDY. The related issue on micro-stamping, you are familiar with that work. California has moved ahead. I know that ATF is at the forefront of technology on all the ballistics research. California now is going to require micro-stamping technology on guns sold in the State after 2010. Do you have a position on whether we ought to have that applicable nationwide or not?

Mr. SULLIVAN. I think the technology is promising. As I recall, the earlier studies were inconclusive. A most recent study shows some great promise with regards to micro-stamping, and I think it builds upon what Senator Whitehouse was talking about in terms

of fingerprinting for the purposes of identifying and linking up crime scenes and potentially crime guns.

Senator KENNEDY. Has the ATF conducted their own study?

Mr. SULLIVAN. We have not. We are waiting for a study—I think a recent study was done by Nanotech that is going to be shared with our lab. Mr. Chairman, we are going to take a look at it through our laboratory as well.

Senator KENNEDY. OK. Well, if you can give us—in the statements, I will clarify precisely, but if you can give us where that is and when you think you will do it and any other information on that, that would be helpful.

The terrorist list, this is incredible. Terrorists are not included among those prohibited from purchasing a weapon in this country. And despite the efforts of myself, Senator Lautenberg, and others, we have been unable to close a loophole, the 2001 training manual discovered in Afghanistan, including terrorists, how to purchase guns in the United States, 2005 GAO report, 35 gun sales to suspects took place even though the background checks resulted in hits on the FBI Violent Gang and Terrorist Offender Watch List. So I have supported legislation in the past to require that at least the FBI be notified if a known or suspected terrorist is discovered through a gun background check. Recently, the Department has agreed to support legislation to close what they call the gap in the current law.

Will you work with us in this area? This is pretty much a no-brainer, but it is continuing at the present time.

Just finally, and then I will submit some others, we have had this Law Enforcement Officers Safety Act of 2000, which allowed retired law enforcement officers to carry concealed weapons across State lines. There is no evidence to suggest why local police chiefs and sheriffs are not the ones to make the decision about whether retired officers can carry concealed weapons across a State line. The idea is kind of absurd to me that this law will prevent crimes because more concealed weapons are being carried by less trained and less regulated out-of-State, off-duty retired officers.

I do not know whether you have had a chance to look at that issue with your experience on the Violent Crime Task Force as a U.S. Attorney. Do you have concerns about efforts to weaken the requirements allowing retired officers to carry concealed weapons?

Mr. SULLIVAN. Well, I mean, you always have, I guess, some concerns with regards to weakening requirements, especially if the requirements were put in place for legitimate purposes. We are in the process right now, Mr. Chairman, of looking at that proposed legislation and working with the Department and offering our opinion to the Department, so if I could get back to you.

Senator KENNEDY. OK. Well, it may very well—it came out of the Committee. It is in sort of a holding pattern now. But the idea that we preempt States around that country to, for example, prohibit concealed weapons in bars, churches, sporting stadiums, and the Federal Government is going to preempt those rules and regulations to permit individuals to be able to carry concealed weapons just personally does not make a lot of sense, and also preempt the local communities, local law enforcement officials, who may have knowledge about these retired personnel being involved in domestic

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violence—we have got examples of 34 members of a particular police community that have been somehow involved and, therefore, are prohibited from carrying weapons. But this is going to preempt those kinds of issues. It raises a lot of issues and questions, and you will have a chance to look at it.

I want to thank you—well, just finally let me just ask you this, and I am very grateful. These dual roles you have, U.S. Attorney and ATF, could you comment briefly? Is one getting short shrift? You are an able, gifted, and talented person. We all know this. But let me talk seriously with you about what is your own kind of view about this. Is this really the best way to go? What is your—I might send written questions just about this, but there is a lot of important work to be done in both areas. You bring a unique experience and background to each of these positions. But at some time—what is your take on this?

Mr. SULLIVAN. Mr. Chairman, there is no question it poses challenges trying to, you know, properly lead two very important components within the Department of Justice. Fortunately, from my perspective, I have been serving as U.S. Attorney now for over 6 years, so I am very familiar with the challenges and the priorities within the U.S. Attorney's Office. I am very familiar with the strength of the resources that we have there, the cases that we are investigating and prosecuting, and I am a phone call or an e-mail or a plane trip away from the District of Massachusetts. So I think being there for 6 years has allowed me to get myself fully engaged in ATF's business over the last year. I will say that the lion's share of my time has been to get up to speed in terms of where ATF is and where ATF should be going over the next several years.

Fortunately, we have talented folks in both agencies—in the United States Attorney's Office as well as at ATF. But I think that there is some value, Mr. Chairman, in terms of allowing people to do some of these assignments and dual-hatted situations to either close a particular need on a short-term basis or try to address the strengths or weaknesses as you are being considered for other challenging appointments within the administration.

Senator KENNEDY. Good. Well, I want to thank you. I will submit some questions. I am a strong believer—this will be up to Chairman Leahy to get people moved into positions and get them into responsible positions and do it in an early and quick way where the Committee is satisfied. I think there are going to be some questions there, but we will certainly be glad to do what we can.

Thank you very, very much, and I am going to ask Senator Cardin if he would be good enough to ask what questions he would and chair the remaining part of the hearing.

Senator CARDIN [PRESIDING]. Thank you, Mr. Chairman. Thank you, Senator Kennedy.

Mr. Sullivan, welcome. It is a pleasure to have you before our Committee. I frequently will ask our local law enforcement for their opinion when we have a confirmation process involving areas of their interest. And I got several replies from local law enforcement agencies in Maryland, and let me just share one with you, because it is typical of the replies that I got.

The ATF has really stepped up over the past several years. We actually are doing as much police work with them as we do with

the FBI. I think Mike Sullivan is a good choice. The ATF is also playing a leadership role in fighting crime, criminal street gangs in the D.C. region, and we are working with them and applaud their efforts. So I just wanted you to know I got back—I do not know whether you had prompted them or not, but they certainly got back good responses in regards to your selection.

I do want to ask, though, I know you have been getting questions on the tracing issues of guns, and I am sure you are aware of this, but Maryland is one of two States that collects shell casings of new guns—I think New York is the other—and maintains data in regards to that. I have been told it is difficult to get information from ATF as far as their database on individual cases, even though it is not blocked by congressional action, and I would just urge you to do what you can so that information is shared when we are dealing with specific investigations. I think we could be more effective in looking for more cooperation rather than making it difficult to share that type of information that could otherwise be made available.

Mr. SULLIVAN. Senator, I will certainly do that. I will make sure that every opportunity we have to share and cooperate with local law enforcement is fully exploited. And if we have information that is helpful to them to advance their investigations, I want to make sure that we are sharing it, absent any legal prohibition that restricts us from doing that—and none come to mind—in the area that you are describing. And thank you for sharing the comments from one of your law enforcement officers. We have a great relationship with the folks throughout the country and the greater Washington, D.C., and Maryland area as well, and we have had some great successes as a result of that collaboration and cooperation.

Senator CARDIN. That was obvious from the replies that we got, and I applaud you for that.

Let me ask one more question on the issue of gun shows. Gun shows present a loophole in regards to weapons that are purchased that should otherwise have background checks. But I just want to quote from an executive of a major hunting organization, and this is a quote: "Gun shows used to be fun, full of real good hunting rifles. Now you go in and they are selling pamphlets that tell you how to make pipe bombs and how to make your semiautomatic guns into an automatic." And that is not unusual for me to hear. It seems to me this has become an area that should be of attention to your agency.

Mr. SULLIVAN. Certainly we do some work, targeted enforcement efforts at some gun shows based on the intelligence that we have been able to develop on our own initiatives or as a result of intelligence developed by local law enforcement.

Senator CARDIN. Well, I would hope that would be a priority, because I think that there are avenues in which those who are really not businesspeople but are looking for ways in which to get around the law have used particularly these shows as an effort to avoid otherwise the requirements, and it is also becoming now a haven for activities that I think were not intended for this type of show. So I would just urge you to try to get as much information about this as possible to move forward in this regard.

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Without objection, we will introduce a statement from Senator Menendez that will be made part of our record. Senator Whitehouse, do you have anything further?

Senator WHITEHOUSE. I am done.

Senator CARDIN. I believe we will keep the record open in order to allow for the questions that are being submitted by the Senators to be responded to. We thank you very much for your cooperation today, and the Committee will stand adjourned.

Mr. SULLIVAN. Thank you, Senator.

Senator CARDIN. Thank you.

[Whereupon, at 3:44 p.m., the Committee was adjourned.]

[Questions and answers and a submission for the record follow.]

QUESTIONS AND ANSWERS

Senate Judiciary Committee Hearing
Executive Nomination
Michael J. Sullivan to be Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

Responses to Questions from Senator Richard J. Durbin for Michael J. Sullivan

1. Crime gun trace information is vitally important for identifying leads in criminal investigations and for uncovering illegal gun trafficking networks. In a September 6 press release, ATF described firearms tracing as "a key component of ATF's enforcement mission."

However, that same press release noted that "only about 30 percent of the crime guns recovered nationwide are submitted to ATF to be traced."

On September 20, you were quoted in USA Today saying "there may be law enforcement agencies out there not asking for [trace data] because they don't think they have access to it." According to the article, you said that "conflicting interpretations of federal law may be contributing to false perceptions that police are no longer able to receive the information."

It seems to me that given ATF's enforcement mission, and given its position as a federal agency and as the repository of gun trace information, the burden should be on ATF to coordinate with state and local law enforcement agencies to ensure that all crime guns get traced. It also seems the burden should be on ATF to clear up false perceptions among the law enforcement community.

a) i. What guidance is ATF currently providing to law enforcement agencies about access to crime gun trace data?

RESPONSE: ATF has taken an aggressive approach to educate the law enforcement community, and the public at large, about access to crime gun trace data. Earlier this year, the Boston Herald published my letter to the editor that dispelled commonly held myths concerning the release of trace data. In my letter, I said: "Let me be clear: neither the congressional language nor ATF rules prohibit the sharing of trace data with law enforcement conducting criminal investigations, or place any restrictions on the sharing of trace data with other jurisdictions once it is in the hands of state or local law enforcement. In fact, multi-jurisdictional trace data is also utilized by ATF and shared with fellow law-enforcement agencies to identify firearm-trafficking trends and leads. Additionally, nothing prohibits ATF from releasing our own reports that analyze trace-data trends that could be used by law enforcement."

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To educate law enforcement on accessibility of trace data, ATF officials and I met with the International Association of Chiefs of Police Executive Committee and the Fraternal Order of Police to discuss this topic. Concurrently, ATF placed the aggregate trace data for all 50 states on the ATF website, prepared specific trace data for ATF Special Agents in Charge to release to the 56 Major City Chiefs, and I held a media roundtable to provide accurate information to the press. Additionally, the broad release of accurate information about data available to law enforcement partners resulted in the first State agreement with ATF to trace all recovered guns (New Jerscy State Police). I believe these efforts to provide accurate information helped to clear up the false perception about access to trace data.

ATF also has published four brochures readily available to law enforcement agencies on ATF's website: www.ATF.gov.

Information for Law Enforcement Agencies (ATF Publication 3312.7) - ATF offers various documents through its National Tracing Center for law enforcement agencies (ie. *What is Firearms Tracing and Why Trace Firearms?; Stolen Firearms Program; Obliterated Serial Number Program; Record Search Request(RSR); International Tracing Program; ACCESS 2000 etc).*

Information for Industry Members (ATF Publication 3312.10) - *ATF is congressionally mandated to centralize the out of business records of Federal firearms licensees (FFLs). Federal statute requires FFLs to forward their records to ATF within 30-days of discontinuance and for the Out-of-Business Records Center to maintain records of FFLs, which are used in the firearms trace process.*

eTrace Internet-based Firearms Tracing and Analysis (ATF Publication 3312.9) - *ATF has provided law enforcement agencies with a paperless firearms trace submission system readily accessible through the internet. eTrace allows participating agencies to submit their trace requests electronically. More importantly, law enforcement agencies can monitor the progress of their traces and retrieve the trace results in real-time. Extra features of eTrace are the built-in utilities to query all firearms trace data submitted by an agency. Any agency can comprehensively trace their firearms and analyze on-line data.*

ATF Disclosure of Firearms Trace Data (ATF Publication 3312.11) - *In keeping with tradition to provide support to our law enforcement partners, ATF published a brochure in May 2007 to address frequently asked questions relative to trace data on crime guns.*

We will continue to reach out to our partners through meetings, articles, bulletins, and training.

ii. Will ATF publish any standards or procedures to make clear to law

enforcement what types of data they can ask for and what they can do with it?

RESPONSE: See above responses.

iii. If so, when will any such standards or procedures be issued?

RESPONSE: See above responses.

b) Please describe the specific steps that ATF is taking to ensure that all the crime guns recovered in this country will be submitted to ATF for tracing.

RESPONSE: In addition to the activities highlighted above, ATF continues to promote Project Safe Neighborhoods (PSN) and Violent Crime Impact Teams (VCIT). Both programs explain the value and encourage the tracing of all recovered crime guns. In addition, ATF continues to encourage the use of eTrace, which was officially made available to the law enforcement community in January 2005 and is being promoted as a fundamental tool of PSN and VCIT. ATF also offers training to law enforcement agencies on properly identifying firearms for accurate traces, and through this training and others (such as the PSN Enforcement Training) consistently and thoroughly encourages all law enforcement agencies to trace all recovered firearms.

2. Last August, I met with the head of ATF's Chicago Field Division, Special Agent Andrew Traver. Special Agent Traver told me that ATF's eTrace program not only makes the crime gun tracing process faster and more accurate, but ATF also offers eTrace for free to any law enforcement agency that signs up for it.

Special Agent Traver told me last August that most of the 1000-plus law enforcement agencies in Illinois had not started using eTrace. I began sending letters to Illinois police chiefs and sheriffs to tell them about eTrace and to encourage them to use it.

Prior to my letters, many of the chiefs and sheriffs in my state had never heard of eTrace., but as soon as they heard about it, they signed up. Within a few weeks after I sent out my letters, the number of Illinois law enforcement agencies using eTrace jumped by nearly 30 percent. By December 2006, I was informed by ATF that Illinois had become the state with the most widespread eTrace usage.

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a) eTrace is a powerful law enforcement tool, and police chiefs and sheriffs need to hear about it. Will you commit to contacting every law enforcement agency in the country to inform them about eTrace?

RESPONSE: ATF will continue to highlight eTrace at every available opportunity and will endeavor to ensure that all law enforcement agencies are aware of its availability and capabilities.

As you may know, eTrace was officially made available to the law enforcement community in January 2005 and was promoted by ATF at the 2005 International Association of Chiefs of Police (IACP) conference in Miami, FL. The eTrace program was also recently promoted at the 2007 National Organization of Black Law Enforcement Executives (NOBLE) Annual Conference and was featured at the 2007 IACP Conference in New Orleans, LA. To date, there are more than 1,500 law enforcement agencies throughout the United States (and in a dozen foreign countries) who are actively utilizing eTrace in support of their investigative work. The ongoing effort of distributing eTrace is currently being coordinated through the responsible ATF field divisions and does require the completion of a standard Memorandum of Understanding (MOU). The eTrace MOU establishes an interagency agreement governing the access and use of eTrace.

Online firearms tracing via eTrace is currently being promoted as a fundamental tool through the Project Safe Neighborhoods (PSN) initiative. ATF, in joint partnership with the National District Attorneys Association (NDAA); the National Crime Prevention Council (NCPC); and the International Association of Chiefs of Police (IACP), has unveiled the "*Every Gun Tells A Story*" advertising campaign to promote online firearm tracing as a key component to the PSN initiative. PSN serves as "America's Network Against Gun Violence" and the "Every Gun Tells A Story" campaign encourages law enforcement agencies to do three things relative to crime guns; Recover It // Trace It // Solve It. Through this campaign, agencies are encouraged to contact their local ATF office if they are not currently tracing recovered crime guns online via eTrace. The eTrace program has also been featured in the IACP's Firearms Interdiction technical assistance newsletter.

b) Will you commit to contacting regularly any agencies that have not yet signed up for eTrace?

RESPONSE: ATF will continue to highlight eTrace at every available opportunity and will endeavor to ensure that all law enforcement agencies are aware of its availability and capabilities.

3. Like police chiefs and mayors throughout my state of Illinois, and like the Illinois State Chapter of the Fraternal Order of Police, I oppose the provision known as the "Tiahrt Amendment" that has been included in recent CJS appropriations acts. I believe the restraints this provision puts on the use of crime gun trace data are unnecessary, and are a hindrance to good law enforcement practices.

I am particularly troubled by the version of this amendment that has been included in this year's Senate CJS appropriations bill. This version would require law enforcement officers to certify that the trace data they receive will not be used or disclosed by anyone for any purpose other than a bona fide criminal investigation or prosecution. A violation of this certification requirement could carry felony criminal penalties for the officer.

a) Do you support legislative language that would threaten police officers with a felony if they use ATF's gun trace data for legitimate law enforcement purposes that do not quite fall within the term "investigation"?

RESPONSE: The Department of Justice does not believe that the "certification" language included in the Shelby Amendment imposes any new or additional requirement on law enforcement, because the current trace process already requires such a certification.

The Gun Control Act (GCA), 18 U.S.C. 923(g)(7) allows ATF to seek trace data only in connection with a bona fide criminal investigation. As a result, there has always been a requirement that law enforcement trace requests to ATF also be connected to a legitimate law enforcement investigation. In recognition of the GCA requirement, ATF's trace request form requires the requesting agency to enter an NCIC crime code in connection with its trace request. That requirement is a form of certification that is already part of the trace process. If a law enforcement officer presently falsifies information on the trace data request form, he or she could be subject to prosecution under 18 U.S.C. 1001 in the same manner as anyone who lies on a federal form in any context. That is true under the current trace process, and is completely independent of any appropriations language.

b) i. In your view, what law enforcement activities would qualify as a "bona fide criminal investigation"?

RESPONSE: ATF will trace all firearms submitted by law enforcement agencies that contain the requisite information, including an NCIC Crime Code.

ii. Would crafting proactive anti-gang policing strategies qualify as a "bona fide criminal investigation"?

RESPONSE: To assist local law enforcement in crafting proactive anti-gang policing strategies, ATF would provide aggregate trace data that includes information such as recovery locations, time-to-crime, top source states, firearm types, and crimes associated with traces.

iii. Would compiling statistics on model and make of guns used in crime qualify as a "bona fide criminal investigation"?

RESPONSE: Such information could be included in aggregate trace data as described above.

In a September 6 press release, ATF says: "ATF is committed to providing critically important trace data to law enforcement agencies who seek our assistance....we must make certain that our efforts remain focused on criminal investigations, including the analysis of comprehensive crime gun trends and patterns."

c) Does this statement mean that ATF has concluded that analysis of crime gun trends and patterns falls within the meaning of the term "criminal investigation"?

RESPONSE: ATF believes that the Tiahrt Amendment does not prevent ATF from providing trace data to cities to identify trafficking patterns and trends. For example, ATF's Violent Crime Analysis Branch (VCAB) analyzes aggregate firearm trace data to determine any trends and patterns relative to firearms trafficking schemes. VCAB will supply these studies or reports to ATF Field Divisions and Federal, State and local law enforcement agencies for studies relative to their respective jurisdiction. These reports typically contain, among other things, information about recovery locations and source states.

4. This August, ATF began publicly releasing aggregate crime gun trace reports for each state. These are the first public reports of this type since 2002, and they are helpful in showing gun trafficking trends. The release of these reports is a welcome development, and I hope these reports will be released on a regular basis.

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Recently, ATF also issued a public report analyzing crime gun traces in one city - New York City. However, according to ATF's Illinois report, the City of Chicago recovered more crime guns in 2006 than New York did- 8,367 guns in Chicago, compared to 7,059 in New York.

a) Will you arrange for the public release of a trace report on crime guns recovered in the City of Chicago?

RESPONSE: Yes. ATF will release to the public an aggregate report on crime gun traces in the City of Chicago.

b) Will you arrange for the public release of trace reports on crime guns recovered in other major metropolitan areas?

RESPONSE: Yes. ATF intends in the future to release to the public aggregate trace data reports on crime guns recovered in other major metropolitan areas.

5. The state-by-state trace reports that ATF issued in August 2007 provide a general breakdown of the types of crime guns recovered in each state. For example, each report lists the numbers of pistols, revolvers, rifles, etc., that were recovered in 2006.

Legislators find this information about crime gun types useful, because it informs our policymaking. If these state trace reports broke down the crime gun types by make and model of gun, that would be even more useful.

For example, a September 15 Associated Press article quoted Miami police officers as saying the number of assault weapon crimes "seems to be increasing every year." Trace reports that break down crime gun data by make and model would help legislators determine whether this perception is borne out by the data. If police officers are being outgunned by criminals, we in Congress want to know about it, and we want to be able to make informed decisions in response.

a) Will ATF provide legislators, upon request, with reports on recovered crime guns, broken down by make and model?

RESPONSE: In response to requests from individual Members of Congress, ATF will provide existing aggregate trace data studies and reports that do not contain law enforcement sensitive information. With respect to requests for customized reports, it is the policy of ATF to accommodate Congress by providing information through the Chair and Ranking Member of committees of jurisdiction. ATF recognizes that Congress

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conducts its oversight of the executive branch through its committees, which act through their chairmen, and we seek to accommodate their needs. In doing so, we provide documents to both the Chair and the Ranking Member of the committee.

b) Will ATF publish standards or guidance on the types of aggregate trace information that can be disclosed to legislators?

RESPONSE: As a general rule, ATF defines aggregate trace data as information that does not reveal the specific underlying trace results that identify, among other things, the retail FFL and first retail purchaser, which is law enforcement sensitive and may be part of an ongoing investigation. The information provided would include information such as recovery locations, top source states, and crimes associated with traces.

c) Will ATF publish standards or guidance on the types of aggregate trace information that can be disclosed to law enforcement?

RESPONSE: In May of 2007, ATF published a pamphlet explaining our policy on the disclosure of firearms trace data (ATF form 3312.11). This document provides guidance as to what types of trace information can be shared with law enforcement. It states that a law enforcement agency with jurisdiction can obtain a comprehensive analysis of its firearms trace data to determine any trends or patterns relative to firearms trafficking schemes, including geospatial analysis of crimes and recovery locations, source states, FFL, and first purchaser. We have distributed this document to our partners in State and local law enforcement and at meetings of the International Associations of Chiefs of Police, the Fraternal Order of Police, and the Major Cities Chiefs. In addition, it is available on our web site.

d) Will ATF publish standards or guidance on the types of aggregate trace information that can be disclosed to the public?

RESPONSE: The information we provide the public would include information about recovery locations, time-to-crime, top source states, and crimes associated with traces. Examples of publicly available information are available on the ATF website.

6. In your testimony before a Senate Appropriations subcommittee earlier this year, you said that "to successfully fight violent crime, it is essential to prevent the illegal flow of firearms to criminals."

I agree. It is an unfortunate fact that there are federal firearms licensees (FFLs) who knowingly sell or supply guns to gang members and other criminals. It is imperative that we break these supply chains and keep guns out of the hands of those who are prohibited from using them.

a) How many inspections of FFLs did ATF conduct in FY 06?

RESPONSE: In FY 06, ATF conducted 7,295 compliance-type inspections. Of these, 4,497 were compliance inspections and 2,798 were special assignments such as theft investigations and industry seminars. ATF also conducted 4,969 application inspections.

b) How many FFLs overall were there in FY 06?

RESPONSE: As of October 10, 2006, there were 107,316 Federal firearms licensees.

c) What criteria does ATF use to determine which FFLs it will inspect over the course of a year?

RESPONSE: ATF uses many different criteria in determining which FFLs to inspect including but not limited to: compliance history, the number of crime gun traces involving an FFL, the time since its last inspection, and the type of license, e.g. ATF is currently engaging in a 3-year initiative to inspect all pawnbrokers.

d) Does ATF look at crime gun trace data to see where investigative resources might best be focused?

RESPONSE: Yes, crime gun data is a key component of ATF's FFL inspection program.

e) In FY 06, how many FFLs were found during inspections to have committed one or more violations of law?

RESPONSE: ATF conducted 4,497 compliance inspections in FY 2006. Of these, 2,218 inspections (49.3 percent) had no violations. The remaining 2,279 (50.7 percent) had violations disclosed during the inspections.

f) How many FFLs had their licenses revoked in FY 06?

RESPONSE: ATF revoked a total of 115 FFLs in FY 06, out of an FFL population of approximately 107,000.

g) ATF reports that 1,526 ATF-referred defendants were convicted in firearms trafficking cases in FY06. How many of these individuals were federal firearms licensees?

RESPONSE: Ten of the 1,526 defendants were FFLs.

h) Does ATF believe it is adequately identifying and prosecuting those FFLs who are knowingly supplying guns to gangs and criminals?

RESPONSE: ATF makes efficient use of its resources through targeted strategies and the integration of its industry operations, criminal enforcement, intelligence, forensic and technological capabilities. ATF's top priorities and responsibilities include identifying FFLs who are suspected of illegally supplying guns to violent criminals, gangs, and to prevent the flow of firearms to organized crime groups. This approach is highlighted in such strategies as Operation Gunrunner along the Southwest Border and the Violent Crime Impact Teams.

i) If the answer to question "h" above is no, what more can Congress do to help?

RESPONSE: ATF believes it is making effective use of its resources.

7. Last year, I was informed by ATF that many gun owners do not keep a written copy of their gun's serial number in a location separate from the gun itself. This becomes a

problem when a gun is stolen, because the owner cannot report the serial number of the stolen gun to the police. If that gun is later used in a crime, the ATF trace on that crime gun will often link back to the innocent owner who had a gun stolen. This is a headache that innocent gun owners would like to avoid.

In February, I wrote you to ask if ATF would be willing to provide each gun purchaser with a document that recorded the serial number of the gun.

In your response, you said that ATF publishes a "Personal Firearms Record" form which it encourages gun owners to use. This form provides a place for the owner to list the gun's serial number and other information that would be valuable to give to the police if the gun is stolen.

It seems that widespread use of this form would be helpful to law enforcement and to gun owners who might have their guns stolen. While gun owners need not be forced to keep this form, it seems that we should at least make sure that each gun buyer is given a form and is encouraged to retain it.

What steps has ATF taken to make sure that every gun owner is given one of these Personal Firearms record forms and is advised about its usefulness? Please describe each step in detail.

RESPONSE: ATF encourages FFLs to distribute the Personal Firearms Record (ATF form 3312.8) to their customers by suggesting that the FFL put their business stamp on the form so customers have a record and the place of purchase. New FFLs are provided all the forms and publications during their first inspection and advised on regulations and how to obtain additional forms. ATF is in the process of posting an open letter to all FFLs on the ATF website, as well as publishing an article in the next FFL Newsletter as a reminder to them to provide this handout to customers who purchase firearms. In addition, the form is available to everyone on ATF's Web site.

Responses from Michael Sullivan to Questions from Senator Feinstein –

Question #1

In your letter to me dated August 31, 2007, you attached some responses to questions raised about ATF trace data sharing. In your Response to Statement 8, discussing whether ATF can give local police trace data about trafficking patterns, you discussed a bill that had been considered in the 109th Congress, H.R.5005. That bill had tried to limit ATF's trace data sharing to situations in which local law enforcement was seeking it for a bona fide investigation. You noted how the Justice Department had written to Chairman Sensenbrenner, proposing to amend this language, to replace "investigation" with "investigative purpose." You said "this proposal was made specifically to address the issue of aggregate analysis."

- The Tiahrt provision contained in the latest Senate CJS Appropriations bill, as reported out of Committee, would similarly allow ATF to share gun trace data only if a local law enforcement agency certified that it was being sought "solely in connection with a bona fide criminal investigation or bona fide criminal prosecution." Wouldn't this language, just like H.R.5005, restrict ATF's ability to provide aggregate analysis to state and local law enforcement agencies?

RESPONSE: ATF has always believed that the Tiahrt Amendment does not prohibit the publishing of studies or reports of aggregated trace data. In every appropriation since 2003, Congress also has enacted language requiring that ATF Tracing Studies contain a disclaimer making it clear that trace data cannot be used to draw broad conclusions about firearms-related crime (Section 621 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, P.L.109-108). The inclusion of this provision indicates that ATF may publish tracing studies or reports. Moreover, the Department of Justice does not believe that the "certification" language included in the Shelby Amendment imposes any new or additional requirement on law enforcement.

- If so, why hasn't ATF yet spoken out against this provision, as it did with H.R.5005?

RESPONSE: See response to above question.

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- Do you agree that this Committee-reported language should be changed, so that, at a minimum, the word "investigation" should be replaced with "investigative purpose"?

RESPONSE: The Department of Justice has indicated its support for replacing the word "investigation" with "investigative purpose."

- Do you have any other concerns about the Tiarht provision contained in the CJS Appropriations bill as reported out of Committee?

RESPONSE: In every appropriation since its inception in 2003, Congress also has enacted language requiring that ATF Tracing Studies contain a disclaimer to make it clear that trace data cannot be used to draw broad conclusions about firearms-related crime (See, e.g., Section 621 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, P.L. 109-108). The inclusion of this provision indicates that ATF may publish tracing studies or reports. If this trace study exception was not included in the appropriations, then ATF could no longer provide these types of data releases to the general public, researchers, or public policy makers. The bill, as reported by the Senate Appropriations Committee, does not contain any comparable provision. As a result, the bill may prevent ATF from continuing to publish non-law enforcement sensitive aggregated trace data reports for the benefit of Congress, our research partners, and the public.

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Senator Feinstein – Question #2

In your letter's Response to Statement 11, describing how ATF had denied Senator Lautenberg requested gun trace data, you noted that the Department has "amended its interpretation" of Tiahrt, to allow ATF to respond to requests for aggregate trace data "from chairs of congressional committees with oversight over ATF." You then noted that, since Chairman Mikulski had approved the request, Senator Lautenberg has now been provided with the data he requested.

- While I am pleased that Senator Lautenberg received his requested information, what is it in Tiahrt, or any other provision of law, that allows ATF to share gun trace data only with the chairman of the committees that oversee it, and not other members of those committees who are similarly charged with such oversight responsibilities?

RESPONSE: In response to requests from individual Members of Congress, ATF will provide existing aggregate trace data studies and reports that do not contain law enforcement sensitive information. With respect to requests for customized reports, it is the policy of ATF to accommodate Congress by providing information through the Chair and Ranking Member of committees of jurisdiction. ATF recognizes that Congress conducts its oversight of the executive branch through its committees, which act through their chairmen, and we seek to accommodate their needs. In doing so, we provide documents to both the Chair and the Ranking Member of the committee.

- Why do you believe that a Senator or Congressman seeking ATF trace data information for policymaking purposes should be required to obtain the committee chairman's approval before he can obtain that information – particularly since that chairman may one day be a member of a different political party?

RESPONSE: See response above.

Senator Feinstein – Question #3

- Please explain why you believe it has been appropriate, and in the best interest of the citizenry, for you to have simultaneously served as both United States Attorney for the District of Massachusetts and as Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives?

RESPONSE: First, I am honored that the President of the United States nominated me as U.S. Attorney, and as Acting Director of ATF, and it has been a privilege to serve in both capacities.

Certainly the dual responsibilities have been challenging, but not impossible, and I remain closely involved with all matters at the U.S. Attorney's Office. I am only a phone call, e-mail or flight away. I believe that my experience in Washington, D.C., has assisted me in being more effective as a United States Attorney because I better understand the Department, its priorities, and its available resources. In turn, I believe that my experience in the field, both as the U.S. Attorney and as a local prosecutor, has helped inform my management of ATF.

I am fortunate to have exceptionally talented and committed people in both offices. These dedicated career Assistant U.S. Attorneys and law enforcement officers understand our priorities and have a commitment to serving the people of the United States. The staff, both at the U.S. Attorney's Office and ATF, are doing an exceptional job of assisting me with leading and managing the respective offices.

- During this period of simultaneous service, please describe the portion of your work hours that you have devoted to each of these jobs, and an estimate of how many days each month you have been physically located in Washington, D.C. instead of Massachusetts.

RESPONSE: Typically, I spend 20 to 30 percent of my time on United States Attorney responsibilities and 70 to 80 percent of my time on ATF responsibilities. Of course, depending on the events of a particular day, these percentages can vary substantially. Furthermore, I spend approximately 14 to 17 days per month in Washington, DC, or traveling on ATF business.

Responses to Questions of Senator Edward M. Kennedy

Hearing before the Senate Judiciary Committee on September 26, 2007
Executive Nomination of Michael J. Sullivan to be Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

Questions for Acting Director Michael J. Sullivan

Questions on Gunshow Loophole

As you know, the U.S. firearms laws currently have a gun show loophole. At gun shows, holders of Federal Firearms Licenses must conduct background checks and keep records for all sales, but unlicensed private sellers have no such responsibility. The Brady Law doesn't apply to them. Recent studies by the Department of the Treasury, the Violence Policy Center, the University of California Davis Violence Prevention Research Program, and others have clearly documented that gun shows are a large market for illegal gun trafficking, and have become a favorite sales outlet for criminals.

Shortly before you took over as Acting Director, ATF came under criticism for a sting operation at a gun show in Richmond, Virginia, facing accusations that its activities may have intimidated some lawful purchasers. In a report issued in June 2007—nearly a year into your service as Acting Director—the Department of Justice Office of the Inspector General found that ATF "does not have a formal gun show enforcement program," and that "ATF's operations at gun shows constitute a small percentage of its overall investigative activities." Yet the report also found that "[p]ast [ATF] operations at gun shows have yielded multiple arrests and convictions of individuals engaging in firearms trafficking, as well as seizures of firearms that were purchased for sale illegally," and that "[m]ost gun show promoters and all state and local law enforcement personnel . . . interviewed supported ATF operations at gun shows."

We know from the vast body of evidence that the gun show loophole has led to increased firearms trafficking, illegal purchases, and violent crime. Groups like Stop Handgun Violence in Massachusetts and the Brady Center have been working diligently to keep this problem in the spotlight. Obviously, any effort by ATF to adopt a rigorous gun show enforcement program will meet with intense opposition from the gun lobby.

1. **Do you agree that the gun show loophole is a significant problem and that background checks should be required for all gun show purchases?**

RESPONSE: As stated in the President's Project Safe Neighborhoods Fact Sheet, issued May 14, 2001, the Administration supports requiring instant background checks for all firearms transfers at gun shows. I support that position.

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2. **As long as the gun show loophole stays open, do you believe that ATF has a responsibility to minimize the illegal behavior and social harm that the loophole causes? If so, how should ATF fulfill this responsibility?**

RESPONSE: One of ATF's highest priorities is to interrupt the illegal flow of firearms to felons and others whose possession of firearms is prohibited under the law. ATF has a responsibility to utilize available laws and resources to ensure that prohibited persons do not acquire firearms.

We focus our investigative activity in the areas that will have the most impact on reducing firearms violence. In some areas of the country, gun shows have not proven to be a significant source of firearms used in criminal activity and have not, therefore, been a significant focus over the past several years. In other areas, however, gun shows have proven to be a significant source of crime guns. For this reason, ATF conducts enforcement operations and engages in educational outreach activities (such as promotion of the "Don't Lie for the Other Guy" program) at gun shows. In this regard, we will continue to work closely with our State and local law enforcement partners. We also will continue to foster communication with firearms dealers, unlicensed firearms sellers, and gun-show promoters to ensure that they are aware of—and are able to fulfill—their obligations under the law. I believe that, working together in continued partnership, we can reduce the number of guns that make their way from gun shows into the hands of criminals—while ensuring at the same time that we do not unduly interfere with the rights of law-abiding citizens to lawfully acquire and possess firearms.

3. **As Acting Director of ATF, have you taken any steps to establish a gun show enforcement program? If so, what does this program do?**

RESPONSE: ATF enforcement activities at gun shows are part of a comprehensive national firearm enforcement strategy. ATF's policy regarding gun shows, which has not changed significantly since 1989, provides guidance and best practices to our investigators concerning dealers and other persons involved in firearms transactions at gun shows. This policy was reissued to ATF field personnel in January 2006. ATF's existing policy and best practices concerning enforcement operations at gun shows support ATF's national objective to prioritize investigation efforts that have the greatest potential to prevent crime and violence and to disrupt illegal firearms activity.

4. **Would you be willing to work with Congress to establish such an enforcement program if confirmed?**

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RESPONSE: If confirmed, I certainly would be willing to work with Congress on any issues falling within ATF's areas of responsibility.

Gun shows are basically part of an unregulated firearms market that includes practices such as flea markets, Internet sales and private sales and transfers of firearms between individuals. As a result, many gun sales are made without the benefit of a mandatory background check. An IACP Report recently recommended that all gun sales and transfers be processed through federal firearms licensees in order to ensure that every individual who purchases a firearm undergoes a mandatory background check.

1. **Do you believe that all firearms purchasers should undergo mandatory background checks?**

RESPONSE: As stated in the President's Project Safe Neighborhoods Fact Sheet, issued May 14, 2001, the Administration supports requiring instant background checks for all firearms transfers at gun shows. I support that position.

2. **Would you support legislation requiring anyone dealing in firearms to be licensed?**

RESPONSE: The Gun Control Act (GCA) currently requires that anyone dealing in firearms must be licensed. The GCA, with certain exceptions, defines a "dealer" as someone who "devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms."

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Questions on ATF Dealer Inspections and License Revocations

One of ATF's primary responsibilities is inspecting federal firearms licensees to ensure they are in full compliance with gun safety laws. With over 105,000 of these dealers throughout the country, it's understandable that ATF can't conduct annual inspections of every licensee. Of course, ATF works hard to fulfill its mission, and I understand from testimony last year by Deputy Assistant Director Audrey Stucko at a House hearing that ATF conducts approximately 4,000 inspections every year, which means that about 4% of licensees are actually inspected each year.

The inspections are instrumental in keeping firearms out of the hands of criminals, but the process for inspecting dealers and revoking the licenses of rogue dealers is problematic. In a recent case, it took ATF nine years to revoke the license of a gun dealer whose illegal conduct occurred in Baltimore. When ATF inspected the gun shop in 1997, it discovered that 45 firearms were missing from inventory and that the dealer sold numerous firearms at gun shows without recording the sales. ATF issued a warning letter to the dealer, but two additional inspections over the next six years found even more flagrant violations, including a 2001 inspection that revealed 133 missing guns.

Nevertheless, the ATF responded to those inspections only with more warning letters. Finally, in 2003, it moved to revoke the dealer's license after finding that 422 guns were missing, more than a quarter of the inventory. Even after all this, ATF allowed the dealer to keep his shop open throughout the three years of appeals. The license was finally revoked in 2006. Obviously, an inspection process that allows such delayed outcomes is unacceptable. In 2004, the Department's Inspector General reviewed the inspection program and concluded it was not effective, and that even with its limited resources, ATF had not organized its resources efficiently.

1. **What steps has ATF taken to use its resources in the most effective way to make the dealer inspection process more efficient?**

RESPONSE: To use resources efficiently, ATF has implemented a Firearms Disposition Emphasis Inspection strategy, which focuses on inspecting licensees whose noncompliance have the greatest potential to cause harm to the public. This strategy also streamlines the traditional compliance inspection to focus on high-risk areas of business operations, such as inventory verification, purchaser eligibility, reporting of multiple handgun sales and suspicious purchasers, all of which can lead to the discovery of illegal firearms diversion. These techniques, along with standard reporting guidelines, ensure that inspections are conducted thoroughly and consistently throughout the country.

ATF also maximizes its resources by using analytical data to direct inspection efforts. Such data includes: FFLs' theft history and compliance history, gun trace information, and the type of license (e.g. ATF is currently engaging in a 3-year initiative to inspect all pawnbrokers).

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2. Has ATF implemented a system for tracking and monitoring adverse actions?

RESPONSE: ATF field managers provide monthly updates on the status of adverse action cases to Headquarters managers, who closely review them to ensure that all follow-up action is timely completed. Quarterly Division Reports (QDRs) are used to track adverse actions taken throughout each fiscal year. In addition, senior field and Headquarters managers receive and review all significant activity reports concerning revocation action.

3. A recent report released by the International Association of Chiefs of Police has recommended strengthening the laws requiring federal firearms dealers to report lost or stolen firearms. Would you support such legislative action to require more stringent reporting requirements?

RESPONSE: Section 923(g)(6) of the Gun Control Act requires that "[e]ach licensee shall report the theft or loss of a firearm from the licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to [ATF] and to the appropriate local authorities." The IACP report recommended that, among other things, federal law "should be strengthened to ensure that dealers keep track of their inventories by requiring them to report *missing* firearms within 48 hours after they know or should know that the gun is *missing*" (emphases added). ATF has interpreted section 923(g)(6) to require that dealers report "missing" firearms as "lost." ATF also has interpreted the law to require reports of thefts or losses (or missing firearms) within 48 hours after the dealer knows or reasonably should have known about the discrepancy in inventory. Thus, I believe that Federal law—and ATF's implementation thereof--already incorporates the IACP recommendation.

4. What additional resources does ATF need to make its inspection program more effective?

RESPONSE: In 2004, ATF's firearms compliance inspection program was reviewed by DOJ's Office of the Inspector General. In its report, OIG recommended ATF revise its staffing requirement so that it could conduct triennial inspections of the firearms license population to effectively regulate the industry. ATF agrees increased triennial inspections would result in greater compliance with recordkeeping and business requirements, thus furthering public safety. Additionally, ATF is constantly seeking to use technological solutions to increase the efficiency of the current IOI workforce. Nonetheless, given our available resources presently, ATF's inspection program is effective and efficient, with increased efficiencies continually being realized.

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5. What are your goals to improve on inadequate past inspections?

RESPONSE: ATF is continually evaluating its own performance and results in order to refine processes and make the best use of resources. Some of our recent efforts are described above. Additionally, over the past three years ATF added approximately 180 non-supervisor field IOIs, which represents a nearly 50% increase. ATF also has enhanced executive-level oversight by establishing a deputy assistant director position to direct its national inspection strategy. Under this new leadership, ATF has improved data collection and analysis processes and developed clear instructions for the field in the form of annual operating plans and procedural guidelines. Training for field supervisors has also been updated and expanded to ensure performance and productivity expectations and are clear.

In questions to former Attorney General Gonzales last January, I asked him to provide the number of federal firearms license revocations between 2000 and 2006. He provided that information, and significantly, the number of license revocations tripled in 2006, compared to the year 2000.

1. What resources does ATF need for an effective license revocation program to prevent rogue firearm dealers putting more guns on the street?

RESPONSE: It is ATF's experience that the overwhelming majority of FFLs do not engage in schemes to illegally divert firearms from lawful commerce. Out of a licensed population of approximately 107,000 dealers and collectors, on an annual basis, approximately 20 FFLs are prosecuted and 100 licenses are revoked. Working to achieve increased compliance will in turn reduce the number of firearms intentionally diverted for criminal use by dealers and purchasers.

Last year in the House, a bill was introduced to require ATF to prove that a dealer specifically intended to violate federal law in order to take action against the dealer. It would have weakened the ATF inspection process even more, especially when rogue gun dealers often claim that their missing weapons were stolen or lost. The bill would have also compromised ATF's ability to revoke the licenses of the worst gun dealers by reclassifying a number of serious federal gun law violations as "minor." The bill was not supported by the Federal Law Enforcement Officers Association. In a letter to Congress last year, the organization expressed strong opposition to the bill, noting it "would have a devastating effect on the ability of law enforcement to stem the flow of firearms from lawbreaking gun dealers to violent criminals."

1. Are you familiar with this legislation?

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RESPONSE: I believe you are referring to HR 5092.

2. If similar legislation came up again, what position would you take on such a bill?

REVISED RESPONSE: If the bill is re-introduced, I would be sure to review its specific provisions. In general, I am supportive of the concept of a graduated scale of administrative sanctions for FFLs. Such a scale, if carefully developed, would provide ATF with additional tools to more narrowly tailor sanctions to fit the seriousness of a particular FFL's violations. Such a system was proposed in the Department's Violent Crime and Anti-Terrorism Act of 2007 which was transmitted to Congress earlier this year.

3. What is the long term impact of the bill on ATF's ability to sanction and prosecute rogue gun dealers?

RESPONSE: If the bill is re-introduced, I would be sure to review its specific provisions.

One of the most important findings of research done before the Tiahrt restrictions is that the underground market for guns is concentrated among a very tiny fraction of high risk dealers. Several studies have found that nearly 60% of crime guns traced by the ATF come from just 1% of federal firearms licensees. By focusing on high risk dealers, ATF could make an important difference in keeping illegal firearms out of the hands of criminals.

1. What steps has ATF taken to identify high risk firearms dealers?

RESPONSE: ATF's Firearms Disposition Emphasis Inspection strategy focuses on inspecting licensees who have the greatest potential to cause harm to the public by streamlining the compliance inspection process to focus on high-risk areas of business operations such as inventory verification, purchaser eligibility, reporting of multiple handgun sales and suspicious purchasers. All of these factors can lead to the discovery of illegal firearms diversion.

Specifically, ATF uses analytical data to direct inspection efforts to high risk firearms dealers. Such data includes an FFLs' compliance history, gun trace information, and the type of license possessed.

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2. **What is ATF doing to prevent firearms licensees from participating in the underground firearms market?**

RESPONSE: ATF takes seriously its responsibility to ensure the lawful firearms industry complies with all relevant laws and regulations. This process begins prior to an individual becoming a licensee. ATF will conduct an in-person interview with the applicant to ensure that he or she understands his or her responsibility as a federally-licensed firearms dealer. ATF considers the education of its licensed population an ongoing process and frequently holds seminars and publishes newsletters and open letters to keep licensees informed of recent rulings and industry trends.

During licensee inspections, ATF not only ensures compliance with the Gun Control Act and its implementing regulations, but also works with the industry member to identify and improve those internal controls outside of the regulatory scheme that serve to improve the accountability of firearms and Federal record keeping requirements. ATF also has partnered with the National Shooting Sports Foundation to implement "Don't Lie for the Other Guy," which is a campaign to increase awareness of the criminal penalties and fines associated with the straw purchase of a firearm.

While the overwhelming majority of the licensed industry does not engage in illegal activity, when ATF does develop information that a licensee is participating in a scheme to divert firearms, ATF seeks to revoke the license and criminally prosecute the licensee. Out of a licensed population of approximately 108,000 dealers and collectors, on an annual basis, approximately 20 FFLs are prosecuted and 100 licenses are revoked.

ATF released data on missing firearms in its 2005 Annual Report. A disturbing statistic emerged from that report. In 2005, 97 rogue dealers had nearly 12,000 guns disappear from their stores and shops. These 97 dealers represented 96% of all missing guns from over 3,000 federal firearms licensees.

1. **What is ATF doing to find these missing guns?**

RESPONSE: For those firearms that are discovered missing by ATF during an inspection, ATF Industry Operations Investigators make every effort to locate the missing firearms. On average, ATF IOIs, working with the industry members, will determine the disposition of approximately 75% of those firearms initially thought to be missing. Any remaining missing firearms are then reported as lost (or stolen) to ATF as required. Criminal referrals are made where appropriate. Additionally, all firearms reported lost or stolen are handled as investigative leads. For example, should any "missing" firearm be subsequently recovered and traced by ATF or any other law enforcement agency, ATF's Firearms Tracing System will recognize the firearm as reported stolen and will notify the affected law enforcement agency.

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ATF's Stolen Firearms Program also provides support to Federal firearms licensees, law enforcement agencies and the public in an attempt to prevent thefts and losses of firearms, the identification and apprehension of those responsible for stealing firearms and the recovery of lost and stolen firearms.

2. What role does ATF have in preventing rougue dealers from obtaining licenses?

RESPONSE: ATF employs a stringent screening process for all firearms license applications. This process includes background checks on applicants and any employees responsible for firearms operations in the business. Background checks are run before an ATF investigator meets personally with every applicant for an interview and inspects the proposed business premises. Applicants in prohibited categories (e.g., felons, drug users, etc.) are denied FFLs.

ATF also denies applications from those who have had previous licenses revoked or who are known to have willfully violated the Gun Control Act. When ATF revokes an FFL, it flags that license in its database. If that dealer re-applies at a later time, an ATF investigator will run the new applicant's name in the database, which will match the earlier record and help the investigator identify the applicant as ineligible for another license.

Furthermore, ATF conducts face to face inspections for all non-collector applicants for a Federal firearms license. ATF typically inspects 5,000 new applicants a year and 14% result in a denial recommendation. Denials are recommended for different reasons including the applicant being prohibited, hidden ownership and the applicant was not able to comply with state or local law, e.g., zoning requirements.

3. What steps will you take to address this issue of "missing guns"?

RESPONSE: Many of the missing guns are a result of FFLs not complying with the recordkeeping requirements under the Gun Control Act (GCA). Recordkeeping is a critical aspect of conducting firearms transactions and operating a firearms business, and industry compliance reduces the risk to public safety. ATF has increased its efforts to help industry members achieve compliance. However, noncompliant FFLs pose a danger to public safety because their substandard business practices compromise the traceability of the firearms they sell and the individuals who purchase them. The increase in the number of Federal Firearms Licensee (FFL) revocations during the past few years is, in part, due to these improvements to ATF regulatory programs. ATF will continue to take steps to better utilize information to conduct more inspections of "at-risk" dealers (e.g., those who have recently had compliance problems). Further, ATF will remain focused on certain public safety-related issues, including the inability of an FFL to account for firearms sold. ATF's efforts in this area are having an effect on FFL compliance. ATF has a performance measure in place which specifically focuses

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on the improvement in accountability among FFLs who have identified compliance problems. Follow up inspections (conducted during fiscal year 2006) of licensees in serious violation revealed a 91-percent reduction in unaccounted for firearms (missing guns).

In addition, ATF has produced a detailed publication (ATF P 3317.2) to provide assistance to FFLs in safeguarding their inventories and guidance in reporting the theft or loss when it occurs. ATF also provides a publication (ATF 3312.8) to assist citizens in recording the identification of their firearms so that a full description is available to law enforcement in the event of theft or loss. Both of these forms are available online.

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Questions on the Tiahrt Amendment

The restrictions on providing gun source data, popularly known as the Tiahrt Amendment, prevent law enforcement organizations from sharing gun source information with each other and prevent law enforcement agencies from obtaining gun source data outside their geographic jurisdictions. The information cannot be used as evidence in any state license revocation, civil lawsuit or any other administrative proceeding unless specifically filed by ATF. The Amendment also prevents ATF from publishing reports that use source data to analyze the flow of guns at the national level.

Several organizations have spoken out against the Amendment. Mayors Against Illegal Guns, a coalition of 210 mayors led by Mayor Tom Menino of Boston and Michael Bloomberg of New York City, has been active in opposing the Tiahrt Amendment and one of the coalition's top priorities is to have the Amendment repealed. In spite of the criticism, the Amendment has been included in the Justice Department Appropriations Bill since 2003 and an even more restrictive version of the gun tracing data restrictions is contained into this year's Senate bill.

The Shelby Amendment, which was recently added to the Justice Appropriations bill, keeps these restrictions in the bill and is even more restrictive than the existing Tiahrt prohibitions. Under the Shelby Amendment, law enforcement officers would be required to certify the reasons why they are requesting gun trace information. This outrageous requirement could result in our police being charged with a criminal offense while investigating gun crimes.

In a May 2nd op-ed in the Boston Herald, you defended the policy of limiting the release of gun trace data, stating that the restrictions merely codify "ATF's longstanding policy of sharing data with other law-enforcement agencies for the purpose of conducting a criminal investigation." Quite frankly, your position surprises me.

1. **Can you provide any example in which the release of crime gun trace information has compromised an ongoing police investigation, or endangered an officer or witness?**

RESPONSE: Pursuant to ATF's longstanding trace data release policy, we have not disclosed beyond the recovering law enforcement agency with the need to know any trace-related information that could potentially compromise an ongoing investigation or endanger a law enforcement officer or witness.

2. **What is your position on the Shelby Amendment, which could potentially subject law enforcement officers seeking crime trace data to criminal charges?**

RESPONSE: The Department of Justice does not believe that the "certification" language included in the Shelby Amendment imposes any new or additional requirement on law enforcement, because the current trace process already requires such a certification.

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ATF recently released state-by-state reports on the number of guns recovered between January 1, 2006 and December 31, 2006. Earlier in 2006, ATF Regional spokesman James McNally said that the Tiahrt appropriations restriction prevented ATF from releasing to the public any "information derived from tracing of firearms." Likewise in an Associated Press article dated February 22, 2006, Regional ATF spokesman John Hagemen said that ATF could not provide to the public statistical breakdowns of gun sold in crimes.

1. **Is ATF now reading the Tiahrt Amendment as not prohibiting the release of summary reports like the ones ATF has recently made available to the public on its website?**

RESPONSE: While there has been some internal and external confusion, ATF has always believed that the Tiahrt Amendment does not prohibit the publishing of summary reports because, in every appropriation since its inception in 2003, Congress has also enacted language requiring that ATF Tracing Studies contain a disclaimer to make it clear that trace data cannot be used to draw broad conclusions about firearms-related crime. See, e.g., Section 621 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, Pub. L. No. 109-108 (2005). The inclusion of this provision indicates that ATF may publish tracing studies or reports.

2. **What prompted the release of this information by ATF after such a long period of refusing to provide this type of data?**

RESPONSE: I asked that we review previous internal policies regarding the release of aggregated firearms trace data. The determination was made that disclosure of this information would not compromise criminal investigations or cause officer safety issues, and that the disclosure is permitted under an exception to the appropriations restriction (P.L.109-108, Sec.621). Pursuant to this exception, ATF will share aggregated trace data studies or reports with Congress and with requesting law enforcement agencies, regardless of their geographic jurisdiction. ATF also will be publishing aggregated trace data reports on our public website.

3. **If confirmed, do you plan to continue the releasing this?**

RESPONSE: Yes, so long as Congress continues to enact the trace study provision described above.

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4. What would prevent ATF from continuing to release this data in future years?

RESPONSE: If the above-referenced trace study exception was not included in the appropriations language, then it is our interpretation that ATF could no longer provide these types of data releases to the general public, to researchers, or to public policy makers.

What resources would ATF need to continue to make annual releases of aggregate gun trace data?

RESPONSE: ATF can continue to provide annual releases of aggregate trace data with existing resources.

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Question on Judge Wolf's Criticisms

As you know, Mark L. Wolf is the Chief Judge for the U.S. District Court in Massachusetts. He was appointed to the court over 20 years ago, by President Reagan, and he's a distinguished jurist who is respected throughout the legal community.

He's been very critical of some of your actions as U.S. Attorney. One time, he criticized you for failing to promptly provide defense attorneys with evidence that might help their clients' cases, as the law requires. He called it "a dismal and persistent pattern of errors by prosecutors . . . that is wreaking havoc on my ability to administer justice." Another time, he criticized you for bringing a high volume of gun and drug cases that could be handled more efficiently by state prosecutors. He said your focus on these cases was coming "at the expense of important federal cases that it would take a lot of hard work to develop." A few months ago, he wrote the Attorney General to protest the lack of punishment for an assistant U.S. Attorney guilty of extraordinary professional misconduct, including a failure to turn over exculpatory evidence. As that Attorney's boss, you were a logical person to discipline him.

1. **What is your response to Judge Wolf's criticisms?**

RESPONSE: Let me respond to the three points raised in your question separately;

A. Regarding the matter of "discovery," I would respectfully disagree with Judge Wolf. I would also note that his criticism was directed at the Office generally, and referenced what he claimed was a historical problem; it was not a criticism of me personally. In fact, Judge Wolf made this statement in his March 29, 2000 dismissal of a matter against Boubacar Diabate, some 18 months before I assumed the position of United States Attorney.

Regardless, the facts and history do not support such an opinion. In December 2001, in response to a request by Judge Wolf, we examined our practice and assessed our performance during the previous two years. It was apparent that there were only a handful of alleged discovery violations. The number, as measured against the number of cases and defendants we handled, did not support a conclusion of a "persistent pattern." In fact, it is important to note in almost each instance, it was the Assistant United States Attorney who discovered and disclosed to the defense and the Court, the late discovery. In several instances, it was a legitimate dispute between the government and the defendant as to whether there was an obligation to turn over certain information to the defendant.

We had investigated and prosecuted hundreds of defendants during the period in question. We had on staff, over 100 Assistant United States Attorneys, and had worked with hundreds of investigators, officers, troopers, agents and other prosecutors, yet only a few incidents were identified, and none that I recall resulted in prejudice to the defendant.

I take my ethical and professional responsibilities seriously. I, as well as the dedicated and talented staff of the United States Attorney's Office, strive for perfection. They honor their obligation to the Court, to the people we serve and to those we charge. As I stated in my March 2002 affidavit, "They are, however, human beings, and as such, they-like all those involved in

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the administration of justice – are subject to occasions of unintended human error, particularly given the time and work pressures under which they sometimes operate." I believe our efforts and success in complying with our discovery obligations has been extremely remarkable.

I also would respectfully disagree with Judge Wolf's criticism that our prosecution of gun and drug cases is misguided. First, I begin with a very simple approach: Congress determines what conduct constitutes a federal crime and the Executive determines which matters to pursue. I have used the statutes and resources provided to help address violent crime in Massachusetts. I have done it on occasion over the objections of Judge Wolf, but in conjunction with our local and state partners. We have used our federal statutes to help target neighborhoods plagued with violent crime, or terrorized by violent repeat offenders. Both Congress and the Administration see the wisdom in this strategy.

At a meeting with the Mayor of Boston and a number of state court judges, Judge Wolf heard, first hand from them, about the importance of federal participation and prosecution of certain crimes, and repeat offenders. These gun and drug cases are indeed important federal cases. They stop some of the most violent offenders from terrorizing neighborhoods, where small children hide in bath tubs to avoid stray bullets. They help neighbors and neighborhoods reclaim their communities. They send the right message of deterrence as we attempt to prevent young people from engaging in violence. We approach the challenge of safer communities through a partnership with the District Attorney's Offices. Each case is reviewed by an AUSA and a member of the local district attorney's office to make a determination about where a defendant, or matter, would be best investigated and prosecuted with a goal of achieving the greatest positive impact on a community.

Interestingly, as best as I can tell, the mix between violent crime cases and non-violent crime cases prosecuted in the United States Attorney's Office in the District of Massachusetts has not changed substantially over the past 20 years.

Additionally, our tremendous success in other practice areas certainly shows we are not doing these important violent crime cases at the expense of other significant federal investigations, prosecutions and interests. For example, we have recovered over $4 billion dollars in health care and economic crime related settlements and fines since October 2001. There have been a number of successful public corruption investigations and prosecutions and several high profile terrorism related investigations and prosecutions, including Richard Reid, the so-called "Shoe Bomber."

With regard to Judge Wolf's criticism regarding what he considered a lack of punishment for an Assistant United States Attorney, the Assistant and the conduct in question were referred to the Department's Office of Professional Responsibility (OPR), as required. They recommended a range of sanctions. I took into consideration the findings of OPR, the service and reputation of the Assistant, and imposed a sanction consistent with the OPR recommendation.

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2. **How do you account for an eminent, Republican-appointed judge repeatedly taking the unusual step of singling you out for public criticism?**

RESPONSE: Judge Wolf has every right to express his opinion regardless of his political affiliation.

3. **What is your response to Judge Wolf's concerns about the lack of punishment in a case where a federal prosecutor – under your supervision – failed to turn over exculpatory evidence, which the defense was required to be given?**

RESPONSE: As I stated in my answer to Question 1, as is required in matters such as this, the Assistant and the conduct in question were referred to the Department's Office of Professional Responsibility (OPR). They recommended a range of sanctions. I took into consideration the findings of OPR, the service and reputation of the Assistant, and imposed a sanction consistent with the OPR recommendation.

As former Attorney General Robert Jackson said in 1940, "The prosecutor has more control over life, liberty and reputation than any other person in America. While the prosecutor at his best is one the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst." The common theme in Judge Wolf's criticisms seems to be that you were overzealous in your prosecution of certain types of cases. Others have criticized you for always seeking the maximum sentence, no matter how small the crime, and for seeking the federal death penalty in Massachusetts, a state that has no death penalty statute.

1. **What is your response?**

RESPONSE: I have always believed that the public's confidence in our criminal justice system is critical. I have also believed that the federal sentencing guidelines add to the public's confidence, in that defendants with comparable criminal histories, convicted of similar offenses, are treated similarly. I have approached my charging authority and sentencing policy and practice the same way. I have however attempted to recognize each matter, each case and each defendant on an individual basis.

While there may be a perception that I seek the maximum sentence each and every time, this is simply not true. We do regularly seek sentences within the guideline range.

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As the U.S. Attorney, it is incumbent upon me to utilize all of the tools Congress provides, and to recommend a punishment that fits the crime. This is also true of death penalty eligible crimes. While Massachusetts does not have a death penalty statute, that does not prevent or preclude the federal government from seeking the death penalty for a federal violation that Congress has authorized as eligible for a death sentence.

2. **Did anyone in the Bush Administration contact you at any point about taking these actions?**

RESPONSE: Except for the requirement to seek Attorney General authorization regarding the death penalty, I have never been contacted by anyone in President Bush's Administration about the death penalty in general, or seeking opportunities to charge death penalty crimes.

3. **We know that in many areas of government, the Bush Administration has placed politics and ideology above the law. Do you feel that you have the commitment to justice and the rule of law to resist any political pressures you would face as Director of ATF that are inconsistent with your best view of what the position requires?**

RESPONSE: Yes. I would note for the record that this Administration has never asked nor encouraged me to place politics and ideology above the law. In fact, I have always been expected to seek justice, and be faithful to my oath and the rule of law. If I am confirmed as the Director of ATF, I will continue to be faithful to my oath and do my best to secure our country.

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Questions on Dual Roles as U.S. Attorney and ATF Chief

Last September, President Bush named you Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. But it wasn't until this March, nearly seven months later, that the President actually nominated you to be Director of ATF. You will have served in this position on an interim basis for over a year if you are confirmed by the Senate.

As Acting Director, you oversee nearly 5,000 employees and an annual budget of close to $1 billion. At the same time, you have continued to serve as U.S. Attorney for Massachusetts. You've been the principal litigator for the United States in the state, and you've also been delegated full control in the areas of personnel management, financial management, and procurement. According to an April 2007 *Washington Post* article, you are one of six U.S. Attorneys to have served double duty, with an important posting in Washington as well as your home state.

Under longstanding rules, U.S. Attorneys had been required to reside in the district for which they were appointed. However, a provision sought by Republicans during the reauthorization of the PATRIOT Act changed the law to allow U.S. Attorneys to live elsewhere if the Attorney General assigns them dual or additional responsibilities. This provision flies in the face of the proud history of U.S. Attorneys serving only the residents of their district. Any U.S. Attorney position requires an enormous commitment of time and energy, and it would impossible to do the job adequately from Washington—much less while running another major federal agency.

1. **How have you managed to run the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Massachusetts U.S. Attorney's Office at the same time?**

RESPONSE: First, I am honored that the President of the United States nominated me as U.S. Attorney, and as Acting Director of ATF, and it has been a privilege to serve in both capacities.

Certainly the dual responsibilities have been challenging, but not impossible, and I remain closely involved with all matters at the U.S. Attorney's Office. I am only a phone call, e-mail or flight away. I believe that my experience in Washington, D.C., has assisted me in being more effective as a United States Attorney because I better understand the Department, its priorities, and its available resources. In turn, I believe that my experience in the field, both as the U.S. Attorney and as a local prosecutor, has helped inform my management of ATF.

I am fortunate to have exceptionally talented and committed people in both offices. These dedicated career Assistant U.S. Attorneys and law enforcement officers understand our priorities and have a commitment to serving the people of the United States. The staff, both at the U.S. Attorney's Office and ATF, are doing an exceptional job of assisting me with leading and managing the respective offices.

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2. **Did you ever feel that you were compromising the quality of your work in either position? Isn't a disservice to the Massachusetts U.S. Attorney's Office to be deprived of permanent leadership for over a year?**

RESPONSE: I don't believe that the quality of my work has been compromised, either as U.S. Attorney, or Acting ATF Director. I have relied on my capacity to put in long days, assisted by my respective staff and management teams, to ensure that both positions received the attention they needed from me personally. I do not take these responsibilities lightly and have worked tirelessly to ensure that the American public, and each agency, has the benefit of the commitment and leadership that they deserve.

3. **Did you ever suggest to anyone that it might inadvisable or inappropriate for you to hold these two positions simultaneously for so many months?**

RESPONSE: I was asked by the President of the United States to serve, and I accepted the responsibilities humbly, wholeheartedly and without reservation. I have never suggested to anyone that it would be inappropriate for me to hold both positions, for any length of time.

4. **When and how will there be a transition to a new U.S. Attorney in Massachusetts if you are confirmed as Director of ATF?**

RESPONSE: Upon my resignation as United States Attorney, I assume that the President of the United States will nominate a U.S. Attorney for the District of Massachusetts. During the pendency of the nomination process, the Department in all likelihood would name an Acting U.S. Attorney.

As U.S. Attorney for Massachusetts and as Acting Director of ATF, you have had broad discretion in the use of resources and in the choice of strategies for enforcing criminal laws and regulating the firearms and explosives industries. Sometimes, the goals and priorities of ATF will be the same as the goals and priorities of the Massachusetts U.S. Attorneys. But other times, I wonder if the two have not been exactly in line.

1. **Do you believe there was any conflict of interest, or any potential conflict of interest, in running ATF and the Massachusetts U.S. Attorney's Office at the same time?**

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RESPONSE: There have not been any conflicts of interest in running ATF and the U.S. Attorney's Office.

2. **Did you ever look into the legal ethics of this situation or develop your own guidelines as to how to handle potential ethical or practical conflicts of interest?**

RESPONSE: I have not developed my own guidelines. If faced with an ethical issue, I would seek the advice of the Department of Justice ethics officer and Office of Professional Responsibility.

3. **Were there ever any instances in which the goals or priorities of the offices were not completely in sync with each other?**

RESPONSE: The agencies' priorities and goals overlap in most areas, with great success. As with all interagency interaction, it is imperative that the lines of communication are open and clear, so that when conflicts arise they can be addressed immediately.

- **If not, how did two independent federal agencies end up overlapping so perfectly?**

RESPONSE: They do not overlap perfectly, but disagreement between ATF and the U.S. Attorney's Office in Massachusetts, just like disagreements between ATF and any U.S. Attorney's Office, are resolved through open communication and working in partnership.

- **If so, how did you handle those cases?**

RESPONSE: Each case is unique, but when conflict does arise, I have always encouraged my management teams to do what is in the best interest of the investigation, the victim or the public. On a rare occasion, I have asked senior level managers to intervene and resolve the issues.

We know that an inappropriate level of political influence has made its way into the Department of Justice, which causes great concern as to whether we have independent thinking leaders in critical positions. It's unacceptable for individuals in key governmental positions to advance the political interests of the Administration, to the detriment of the public.

1. **As Director of ATF, what steps will you take to ensure that the agency remains free of inappropriate political influence?**

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RESPONSE: I wholeheartedly agree that it is unacceptable for individuals in key governmental positions to advance the political interests of the Administration, to the detriment of the public. Our job is to serve the public and to protect public safety. I do not and would not tolerate inappropriate political influence at any level of government, and will communicate my expectation to the staff at ATF that if they experience such influence, that they should report it to me and I will deal with it appropriately. Having said that, it is important to point out that I have never seen, nor been pressured within the Department of Justice by inappropriate political influences.

2. **Have you or any member of your staff attended political briefings by senior Administration leadership?**

RESPONSE: I have not, and I am not aware that any member of my staff, attended any political briefings.

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Question on Sheriff Cabral Grand Jury Investigation

Under your leadership, the Massachusetts U.S. Attorney's Office conducted a grand jury investigation of Suffolk County Sheriff Andrea Cabral and two of Cabral's top aides from 2003 to 2005 on whether they acted illegally in banning a contract employee from the Suffolk County House of Correction. After 28 months, the grand jury returned no indictments, and no criminal charges were ever brought. There were many troubling features of the investigation:

- it lasted an unusually long time and became unusually hostile and public in nature;
- there were allegations that the actions of you and your employees were motivated by personal enmity and/or political goals;
- there were allegations that you and your employees misled Sheriff Cabral and improperly coached the terminated employee;
- at one point, Sheriff Cabral was asked to testify before the grand jury on the day of the Sheriff's election (which she then won as a Democrat);
- press accounts suggest that confidential grand-jury information was leaked to the media.

Sheriff Cabral told one newspaper "that there was no basis for an investigation and certainly no basis for an indictment." She said that as the grand jury investigation entered its second year, she became "increasingly less confident in its integrity and fairness." Her lawyer filed a complaint against you with the Department of Justice's Office of Professional Responsibility. In his complaint to the DOJ's Office of Professional Responsibility, Sheriff Cabral's lawyer accused your office of questionable investigative tactics and motives in your handling of her case. He claimed the following:

- you and your aides pursued Cabral with extraordinary and excessive zeal;
- you deceived Cabral by setting up a meeting under false pretenses;
- the true purpose of convening the grand jury was not to investigate a potential felony but rather to preserve an informant's credibility for future cases;
- you ignored evidence of the terminated employee's misconduct and credibility problems as well as exculpatory evidence from the Sheriff's Department; and
- you leaked confidential information to the press in an effort to discredit Cabral.

1. **Can you comment on these allegations?**

RESPONSE: As a general matter, I cannot comment on the initiation or substance of any grand jury investigation. However, it is public information that the FBI and my office received a complaint from Nurse Sheila Porter that she had been fired from her position with the Suffolk County House of Correction in violation of her civil rights. Nurse Porter said that she had been fired because she provided information to the FBI about an inmate at that facility who claimed he had been beaten by guards. This was a serious allegation. If true, and if there was sufficient evidence to prove the allegation, it could have been a violation of criminal law. However, there was insufficient evidence to prove a crime beyond a reasonable doubt.

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At the conclusion of my offices' evaluation of Nurse Porter's compliant, Ms. Porter was provided a letter explaining our office's position. In addition, counsel for Sheriff Cabral was provided a letter. I believe these letters respond to the issues set forth above.

I should also note that Nurse Porter filed a federal civil law suit against Sheriff Cabral and the Suffolk County House of Correction alleging civil rights violations. Those violations arose from her firing by the Suffolk County House of Correction for providing information to the FBI. On January 19, 2006, after a seven day trial at which Sheriff Cabral and her senior staff testified, a federal jury held in Nurse Porter's favor. The jury awarded Nurse Porter $360,000 in compensatory damages and $250,000 in punitive damages. Notably the jury concluded that Sheriff Cabral, "acted with a callous and reckless disregard to the plaintiff's federally protected rights." Judge Woodlock has subsequently upheld the jury verdict and awarded Nurse Porter an additional $275,000 in attorneys' fees.

Sadly, Nurse Porter suddenly died of cancer a few weeks ago. Because her civil case was on appeal, she did not collect any damages prior to her passing.

2. Do you know if the Department of Justice has taken any action in response to this complaint?

RESPONSE: Your question states that in a complaint to DOJ OPR, Cabral's lawyer claimed that USA Sullivan and his aides "pursued Cabral with . . . excessive zeal"; deceived Cabral by setting up a meeting under false pretenses"; convened a grand jury in the matter for the "true purpose" of "preserv[ing] an informant's credibility," and "not to investigate a potential felony"; "ignored" exculpatory evidence; and "leaked confidential information."

I have been advised by OPR that their records reflect that Cabral's lawyer brought only one of these five allegations to its attention -- the alleged leak of confidential information. Specifically, in a May 19, 2005 letter to OPR, Cabral's attorney alleged improper disclosures, in violation of Fed. R. Crim. Proc. 6 (e) and the Department's Press Guidelines at 28 CFR 50.1, of matters occurring before the grand jury investigating his client. (Cabral's attorney provided OPR with a copy of a May 12, 2005 *Boston Globe* article in which the disclosures appeared.) Cabral's attorney reiterated the request in a June 17, 2005 letter to OPR. Thereafter, in an August 3, 2005 letter to OPR, I joined in the request.

The Department's protocol for handling requests for investigation of unauthorized disclosures requires OPR and the Office of the Inspector General (OIG) to confer with the Office of the Deputy Attorney General (ODAG) with regard to whether an investigation is warranted. The protocol was followed, and ultimately the Department determined not to initiate an investigation in this case.

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It has been reported in the media that the Office of Public Responsibility may be conducting an investigation into improper leaks from your office about Sheriff Cabral's grand jury proceedings. A December 2002 press release from your office requested such an investigation.

1. **If these reports are correct, do you know the status of this investigation and whether it has produced any findings?**

RESPONSE: As set forth above, no DOJ entity initiated an investigation into the alleged unauthorized disclosures.

2. **Do you know how the *Boston Globe* came to possess confidential information from the grand jury about Sheriff Cabral's case?**

RESPONSE: I don't know if, or how, the Boston Globe received confidential grand jury information.

In addition to Sheriff Cabral's complaints, a June 8, 2005 press release issued by the Massachusetts U.S. Attorney's Office indicates that Common Cause had criticized remarks you made as "justifying and defending . . . the misuse of federal email for political canvassing." And an October 3, 2003 press release indicates that you personally contacted the head of the Office of Professional Responsibility to request "that OPR initiate and conduct a review" of an unspecified matter involving possible misconduct by members of your office.

1. **Are you aware of any other complaints that have been made against you or your subordinates to the Office of Professional Responsibility or to other state or federal bodies? If so, are you aware of any action that has been taken on those complaints?**

RESPONSE: I self reported to OPR a potential appearance of a conflict of interest regarding my District's hiring of an AUSA with whom I am personal friends and jointly own a vacation home. OPR and OIG were provided with the applicable details and both offices determined that the matter did not warrant a formal referral to them for further investigation or inquiry into my conduct. I understand that this matter is still under internal review in the Executive Office for U.S. Attorneys.

I have been advised by OPR that its records reflect no matters warranting initiation by that office of either an investigation or an inquiry into my professional conduct since I began my tenure as U.S. Attorney in September 2001. OPR further informed me that while, during my tenure, it

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initiated and conducted investigations of a number of line AUSAs in my office, in none of those investigations did my own performance of duties merit investigation. I am unaware of any complaints made against me or any employee of my office to "other state or federal bodies."

For the record, according to my recollection, there was no U.S. Attorney press release issued on October 3, 2003. I believe the quote you have cited is from a letter I sent to H. Marshall Jarrett, Esq. on October 2, 2003.

2. Are any complaints still under investigation?

RESPONSE: OPR informs me that, while it has several open inquiries into the conduct of AUSAs in my office, none has been initiated regarding my performance of duties or professional conduct.

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Questions on Microstamping

California recently enacted a law to require microstamping technology on guns sold in the state after 2010. The measure was supported by Mayor Villaraigosa, Chief Bratton and Sheriff Baca in Los Angeles, and by Chiefs of Police from departments across California. Microstamping is an innovative technology that uses lasers to make precise, microscopic engravings of a gun's make, model and serial number on the firing pin and chamber. This information is transferred onto the cartridge casing when the handgun is fired. As a result, the casings can provide law enforcement with important and timely information, without the need to consult a database or imaging system that may or may not contain a match.

Microstamping would in no way replace any of the methods currently used by ATF to conduct ballistics tests – it would merely enhance the work currently conducted by the agency. But there's no doubt that the technology will substantially improve law enforcement's ability to quickly identify and link shell casings found at a crime scene to the particular handgun from which it was fired. An IACP Report recently called for greater investments in advanced technologies to improve officer and public safety, such as innovations like microstamping.

I know that ATF is in the forefront of technology on firearms and ballistics research. The ATF labs are critical for quickly and accurately identifying the sources of specific firearms, and the types of ammunition used at a particular crime scene.

1. **What is your opinion of microstamping technology?**

RESPONSE: At this time there is limited research available to support an informed opinion of "microstamping" and its value to firearm crime investigations. There are many variables that should be addressed which include but are not limited to: application within the gun manufacturing process; suitability with different types of ammunition and guns; ease of defeating the process; and ease of viewing the engravings (e.g. naked eye, microscope or higher technology).

The California law gives manufacturers and law enforcement until January 2011 to investigate these variables and others that might be identified with the "microstamping" technology. I have directed the ATF Laboratories to initiate a study of "microstamping" and its application in firearms manufacture and the marking of shell casings.

2. **Following up on my question from the hearing, would you support funding for a study of microstamping technology?**

RESPONSE: As indicated in my response to the previous question, there needs to be additional study of this "microstamping" technology if it is to be used successfully by law enforcement for the reason intended. The ATF Laboratories will study "microstamping", beginning with a full review of any completed studies or ongoing studies. This review will be followed by actual

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testing of the technology by ATF scientists. We plan to partner with a State or local law enforcement laboratory in this study. Finally, we will also evaluate the compatibility of "microstamping" with the ATF NIBIN Program.

3. **Would you support federal legislation requiring microstamping technology for guns manufactured in the United States? If not, can you please explain why not?**

RESPONSE: It would be premature of me to take a position on such proposed legislation before the conclusion of the various studies.

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Questions on the Assault Weapons Ban

I've long been opposed to the sale of assault weapons. Assault weapons are killing machines intentionally designed to maximize their deadly power by using a rapid rate of fire. Over and over, we've endured horrific mass shootings that might have been less devastating if we had an effective and permanent ban on these killing weapons and their ammunition. As the Virginia Tech tragedy reminded us, the high capacity ammunition clips used with these weapons virtually guarantee that a killer can inflict severe damage in a brief period of time.

In one of the worst mass shootings in recent history, a troubled college student engaged in a killing spree lasting only 9 minutes that inflicted over 100 wounds on the victims. An estimated 170 shots were fired – about one shot every three seconds. In the end, more than 50 students, staff and faculty were injured or killed. Although the weapons involved at Virginia Tech were not semiautomatic weapons, investigators recovered 15-round and 10-round magazines -- magazines that were banned for ten years under the Assault Weapons Ban.

Many organizations have called for a renewal of the assault weapons ban. In a recent report, the International Association of Chiefs of Police called for a complete ban on military-style assault weapons. They pointed out that a 2003 analysis of FBI data revealed that almost 20% of officers who died in the line of duty between 1998 and 2001 were killed with weapons that could be classified as assault weapons. They've also called for a ban on .50 caliber sniper rifles, which can penetrate armor plating and destroy aircraft. These weapons are currently sold with less restrictive federal controls than standard handguns.

We know from a GAO report that these weapons have been obtained by drug dealers in Indiana, Missouri and California. As Seattle policy analyst Bob Scales points out, the assault weapons issue is "not just a police issue. It's a public health issue, it's a youth issue and our schools are involved." The failure to renew the ban has undermined the safety of our streets, our neighborhoods and our schools. These high-capacity weapons and ammunition have no place in any community in America. We can no longer fail to act when so many lives are at stake.

1. **What is your position on the assault weapons ban? What about .50 caliber rifles?**

RESPONSE: I agree with the President's previously announced position supporting reenactment of the ban on semiautomatic assault weapons. I would be willing to review any specific legislative proposals to ban .50 caliber weapons.

2. **Would you support legislation that regulates high capacity magazines?**

RESPONSE: I agree with the President's previously announced position supporting reenactment of the ban on high capacity magazines.

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The risks of these weapons not only jeopardize lives in our communities. They also pose a serious threat to law enforcement. According to the National Law Enforcement Officers Memorial Fund, during the first six months of 2007, more than 101 U.S. police officers have been killed on duty already this year – the highest number of such deaths in 29 years. More than half were the result of fatal shootings.

Homicides involving assault weapons are on the rise. A few weeks ago in Miami, a shooter killed a police officer and injured three others using an AK-47. U.S. Attorney Alex Acosta has said, "These bullets are powerful: they go through walls, they go through cars and if you just spray the general vicinity you're going to get innocent bystanders. A shooting that might have been an injury previously is now a death."

1. **My understanding is that the federal government does not keep track of the number of crimes involving assault weapons. Would you be willing to support an effort to keep track of the number of crimes committed with these violent weapons?**

RESPONSE: It is important to note that there is no longer a definition of "assault weapon" within the Gun Control Act (after the expiration of the Violent Crime Control and Law Enforcement Act of 1994). Although ATF does not currently track all crime and the involvement of different types of firearms in those crimes, ATF's National Tracing Center and Violent Crime Analysis Branch closely monitor the type of firearms recovered and traced by law enforcement. This information is analyzed to identify trends regarding "weapons of choice" in different areas of the country. ATF uses this information in formulating strategies to address the trafficking of these firearms into the hands of criminals.

2. **Part of the answer to this violence is linked to reducing the number of assault weapons on the street. Would you be willing to work with us in Congress opposed to the ban?**

RESPONSE: I agree with the President's previously announced position supporting reenactment of the ban on the semiautomatic assault weapons.

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Brady Act Violations

ATF has a central role in the enforcement of the Brady Act. Relying on referrals from the FBI, ATF has the responsibility to investigate whether individuals provided false information in order to purchase a gun.

1. **Are you aware of steps taken toward prosecutions based on Brady Act violations that have occurred during your tenure as Acting Director? If so, how many?**

RESPONSE: I have discussed this specific issue with the nation's US Attorneys. They are interested in and committed to ensuring that appropriate matters are investigated and prosecuted. We all agree that prosecution could have a valuable deterrent effect.

Within each of ATF's field divisions, the special agent in charge (SAC) has coordinated with their respective U.S. Attorneys to establish guidelines for the referral of Brady Act violations for prosecution. These guidelines ensure the best use of investigative and prosecutorial resources. During FY 07, ATF referred 139 cases for prosecution based on Brady Act violations, based upon Brady Act violations such as possession of a firearm by a prohibited person and/or providing false/fictitious information to a FFL. Currently, 44 defendants have been prosecuted, with the remaining defendants still in the judicial process.

2. **How much discretion do individuals working in the agency have to pursue these cases? Would you be willing to provide the Committee with updated statistics on the number of prosecutions and the nature of the charge in each case?**

RESPONSE: Each of ATF's field SACs works in coordination with the U.S. Attorneys within their geographic areas of responsibility to establish guidelines for the referral of Brady cases for prosecution. These guidelines are developed in conjunction with the SACs overall strategy to direct investigative efforts that will have the greatest impact in the communities for which they are responsible. Several factors might be taken into consideration when establishing these guidelines such as the type of firearm involved, prior convictions and criminal intent of the individual. Available statistics for FY 07 are above. ATF would be pleased to provide the Committee with updated statistics, as requested.

Under the Gun Control Act of 1968, all businesses manufacturing, importing or selling firearms must have a federal license. Since the passage of the Brady Act of 1993, federally licensed gun dealers are required to contact the FBI or state authorities to run a background

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check prior to each and every gun sale. Over 70 million background checks have been conducted since the Brady Act became law. The background check is intended to confirm whether a person is eligible to purchase a firearm, or a "prohibited purchaser." Under the Brady Act, the categories of "prohibited purchasers" include felons, individuals fleeing an outstanding arrest warrant, drug users or addicts, mentally ill individuals, and those found guilty of domestic violence.

The background check system is a tremendous tool, but an obvious problem is whether all the information on prohibited purchasers is getting into the database since there are so many gaps in the system. States are under no requirement to submit information to the database. Estimates suggest that 90 percent of disqualifying mental health records – and perhaps as many as 25 percent of felony records – have not been provided by the States. More than half of all states do not provide any records about mental health disqualifications at all.

Some states – such as Virginia, Maryland, Florida, Connecticut, California and Illinois – have taken strong steps to improve their laws, so that more information is entered into the database. But much more still needs to be done. Some States are hesitant to provide information due to privacy concerns – but States can provide information in the NICS system without indicating the facts about a person's disqualification. For example, information can be entered without identifying the details of a mental health diagnosis or a medical history of drug abuse.

1. **Do you agree that states should have more federal incentives to provide information to the background check system?**

RESPONSE: The Department of Justice supports the goal of strengthening the National Instant Criminal Background Check System (NICS), including providing appropriate assistance to states to make information available to the background check system.

2. **What steps do you plan to take to make sure that States are aware of the methods to provide information to the federal database without disclosing any private medical information?**

RESPONSE: In partnership with the FBI, ATF has taken steps to ensure that States are aware of specific methods to provide information to NICS, particularly private information concerning persons with health needs. For example, ATF has issued letters to all State Attorneys General and federal firearms licensees explaining the federal firearms prohibition relating to "mental defectives" in the GCA and encouraging states to make relevant information available to the NICS. These letters are available on the ATF's website at http://www.atf.gov/firearms/openletters.htm. ATF also has revised the Federal Firearms Transaction Record Form, used by individuals in purchasing firearms from FFLs, to make it clear that any person who has been found by a court, board, or other lawful authority to be a danger to self or others is prohibited from purchasing a firearm or ammunition.

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ATF is also working with the Department to implement the recommendations concerning federal databases and privacy laws as set forth in the "Report to the President on Issues Raised by the Virginia Tech Tragedy." As you may know, this Report was developed by the Departments of Justice, Health and Human Services, and Education, and delivered to the President on June 13, 2007. The report concluded that accurate and complete information on individuals prohibited from possessing firearms is critical to the effectiveness of federal firearms law. To improve information sharing, the report recommended that the Department of Justice, through the FBI and ATF, should:

- Reiterate the scope and requirements of federal firearms laws, including guidance on the federal firearms prohibition in the GCA and how to provide information to the NICS on persons whose receipt of a firearm would violate state or federal law.

- Continue to encourage state and federal agencies to provide all appropriate information to the NICS so that required background checks are thorough and complete.

Specifically regarding privacy laws, the Report concluded that the Department of Health and Human Services and the Department of Energy should develop additional guidance clarifying how information can be shared legally under the federal privacy laws and disseminated widely to mental health, education and law enforcement communities

A link to this report may be found at
http://www.usdoj.gov/opa/pr/2007/June/vt_report_061307.pdf.

3. **Keeping guns out to the hands of prohibited purchasers has to a top priority. The IACP Report recommends that the federal government increase funding for ATF personnel and technical assistance to deal with gun violence. What specific resources does ATF require to help keep guns away from prohibited purchasers?**

RESPONSE: In 2004, ATF's firearms compliance inspection program was reviewed by DOJ's Office of the Inspector General. In its report, OIG recommended ATF revise its staffing requirement so that it could conduct triennial inspections of the firearms license population to effectively regulate the industry. Given our available resources, ATF's inspection program is effective and efficient, with increased efficiencies continually being realized. Further, given the significant impact made by ATF's limited special agent workforce in stemming the flow of firearms trafficking and stopping violence in our communities, any increase in special agent staffing would proportionately increase ATF's investigative impact.

Incredibly, terrorists are not included among those prohibited from purchasing a weapon in this country. Despite many efforts by myself, Senator Lautenberg and others, we still haven't

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been able to close this loophole. In 2001, a training manual was discovered in Afghanistan, instructing terrorists how to purchase guns in the United States. In January 2005, GAO reported that 35 gun sales to suspects took place - even though background checks resulted in hits on the FBI's Violent Gang and Terrorist Offender Watchlist. I've supported legislation in the past to require the FBI to be notified immediately if a known or suspected terrorist is discovered through a gun background check. The legislation would also require records of such background checks be kept for more than 24 hours.

Recently, the Justice Department has agreed to support legislation to close the gap in current law and allow the Attorney General to bar the purchase of a gun or explosive device by any person under suspicion for involvement in any terrorist-related act. I would hope that we could work together to close the loophole in current law.

1. **What's your view on such legislation? Can you offer any explanation why anyone would oppose including terrorists among those barred from purchasing a gun in this country?**

RESPONSE: I agree with the Department's position that the GCA should be amended to address the possession by or transfer of firearms to persons on the terrorist watch lists.

2. **Do you think that terrorist watch list checks should be part of the Brady background check process?**

RESPONSE: Yes, I believe that terrorist watch list checks should be part of the Brady background check process. As you may know, currently NICS background checks will "delay" a potential firearms transaction at an FFL that finds a hit on the Violent Gang and Terrorist Organization File (VGTOF). The current delay in these cases allows the FBI to coordinate with field personnel who may have information about the person that is not yet posted in NICS and that reveals that he or she falls into one of the current prohibiting categories. These delays are conducted pursuant to the Acting Deputy Attorney General's November 17, 2003 directive and began on February 3, 2004.

3. **Shouldn't suspected terrorists on the watch lists be statutorily prohibited from buying or possessing a firearm?**

RESPONSE: I agree with the Department's position that the GCA should be amended to address the possession by or transfer of firearms to persons on the terrorist watch lists.

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Assistance to Undercover Agents

The ATF has a history of successfully using undercover agents to infiltrate suspected criminal organizations to obtain information and build criminal cases against members who engage in illegal conduct. When these undercover agents complete these types of assignments, their lives may be threatened by members of the organization they infiltrated.

1. **What are the general policies and procedures for protecting agents in undercover assignments?**

RESPONSE: When undercover is used as an investigative technique, it is the responsibility of the special agent in charge, group supervisor, case agent and undercover agent to continually review and utilize all available intelligence during the time the undercover agent is participating in the investigation to ensure that the operation is conducted in a safe manner. ATF policy clearly describes those procedures that will ensure undercover operations are conducted in a proper and secure manner with the goal of reaching predetermined objectives.

In addition, ATF policy requires special agents to complete operational plans. Operational plans are used in the planning phase of enforcement activities such as those involving the use of special agents in an undercover assignment. An operational plan is utilized to identify critical elements and set parameters for the enforcement operation in an effort to increase the level of preparation and safety of all special agents.

ATF's Undercover Branch is responsible for ensuring the undercover agent has all the necessary tools and documentation needed to carry out their undercover role. Personnel from the Undercover Branch frequently meet with undercover agents, case agents and supervisors to tailor their identities and identify required tools to suit their undercover role. This is done to ensure the success of the investigation and the undercover agent's ability to withstand close scrutiny or compromise.

2. **When threats are made against former undercover agents or their families, what policies and procedures are used to ensure that they are aware of these threats?**

RESPONSE: ATF policy addresses the reporting of all credible threats to ATF employees, facilities and operations. This policy discusses the responsibility to report threats and in turn determine the response necessary for the protection of ATF personnel and assets. It is incumbent upon the immediate supervisor and the appropriate chain of command to ensure the undercover agents and their families are fully aware of the threats and that we attempt to make them safe while ATF investigates their credibility.

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3. **What problems have arisen in carrying out these policies and what steps have you taken to resolve these problems and to prevent them the future?**

RESPONSE: The most prevalent problem we have encountered is miscommunication. This includes miscommunication between Headquarters offices and field divisions, as well as miscommunication within Headquarters. Policies and procedures are being revised to ensure appropriate coordination to facilitate the safety of the affected agent and his/her family. This includes ensuring the agent and his/her family are kept informed of any threats, the progress of any follow up investigation, and discussions which may result in a permanent relocation to a more safe and secure location.

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Responses to Questions of Senator Charles Schumer

Hearing before the Senate Judiciary Committee on September 26, 2007
Executive Nomination of Michael J. Sullivan to be Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

Questions for Acting Director Michael J. Sullivan

At your confirmation hearing last week, you agreed to provide me with written follow-up responses for which you did not have immediate answers available. The questions were as follows:

1. Russell Timoshenko, a New York Police Department detective, was gunned down during a traffic stop last July in Brooklyn, New York. It appears that, following the shooting, the NYPD requested data from ATF about crime guns originating in Virginia. Reports have indicated that the ATF refused to provide any aggregate trace data in response to the request. Can you please provide a description of the NYPD's (or any other entity's) trace data requests in connection with the Timoshenko shooting, and the reasons for any denials thereof?

RESPONSE: ATF traced the firearms recovered from the Timoshenko crime scene and provided all available trace information to the NYPD within hours of recovery of the firearms. ATF has no record of any other trace request in connection with the Timoshenko shooting other than the submission and immediate return of successful trace information to NYPD.

2. Were any requests in connection with the Timoshenko shooting denied because of the restrictions imposed by what is commonly known as the "Tiahrt" amendment, or current Congressional appropriations restriction that prevent ATF from disclosing information contained in the Firearms Trace System Database?

RESPONSE: ATF traced the firearms recovered from the Timoshenko crime scene and provided all available trace information to the NYPD within hours of recovery of the firearms. ATF has no record of any other trace request in connection with the Timoshenko shooting other than the submission and immediate return of successful trace information to NYPD.

3. What, if anything in the Tiahrt amendment prevents the ATF from sharing aggregate trace data about a particular FFL with a requesting jurisdiction?

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RESPONSE: The Tiahrt Amendment does not prohibit ATF from sharing with law enforcement aggregate trace data. However, it has long been ATF's policy not to disseminate trace data which includes information such as the retail FFL or the first retail purchaser. This type of data is law enforcement sensitive and would have the potential to jeopardize ongoing investigations.

4. Language that passed the Senate Appropriations Committee earlier this year introduces two new restrictions on the sharing of trace data on firearms: (1) an explicit prohibition on law enforcement entities sharing trace data with each other; and (2) a provision requiring law enforcement officials to certify, under penalty of prosecution, that they will not use trace data requests for interdiction efforts or other trend analysis. Do you support the passage of these additional restrictions?

RESPONSE: The Shelby Amendment does not prohibit sharing among and between law enforcement agencies because the Amendment contains the following caveat, "That nothing in the previous proviso shall be construed to prevent the sharing or exchange of such information among and between Federal, State, tribal, local or foreign law enforcement agencies or Federal, State, or local prosecutors, or national security, intelligence, or counterterrorism officials, provided that such information, regardless of its source, is shared, exchanged, or used solely in connection with bona fide criminal investigations or bona fide criminal prosecutions or for national security or intelligence purposes."

The Department of Justice does not believe that the "certification" language included in the Shelby Amendment imposes any new or additional requirement on law enforcement. The Gun Control Act (GCA), 18 U.S.C. 923(g)(7) allows ATF to seek trace data only in connection with a bona fide criminal investigation. As a result, there has always been a requirement that law enforcement trace requests to ATF also be connected to a legitimate law enforcement investigation. In recognition of the GCA requirement, ATF's trace request form requires the requesting agency to enter an NCIC crime code in connection with its trace request. That requirement is a form of certification that is already part of the trace process. If a law enforcement officer presently falsifies information on the trace data request form, he or she could be subject to prosecution under 18 U.S.C. 1001 in the same manner as anyone who lies on a federal form in any context. That is true under the current trace process, and is completely independent of any appropriations language.

5. In your estimation, to what extent would the passage of the two additional restrictions described above affect the ATF's ability to slow the movement of illegal guns through the country?

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RESPONSE: For the reasons set forth in the response to the previous question, I do not believe that these provisions would have any significant effect on ATF's enforcement efforts.

6. On may 2, 2007, you wrote in the Boston Herald that "Once a requesting agency receives sensitive trace data from ATF, it become the agency's data to share with other law enforcement entities as it deems appropriate." Are your comments compatible with the additional restrictions on information sharing that appears in the language, described above, that has passed the Senate Appropriations Committee?

RESPONSE: For the reasons set forth in the Response to Question 4, I believe that the proposed Senate amendment is compatible with ATF's position on local law enforcement agencies sharing information with other local law enforcement agencies.

In addition, I would greatly appreciate answers to the following:

7. Does the existing Tiahrt amendment language prohibit the ATF from sharing aggregate information dealing with the tracing of weapons from a particular state, which were recovered in a particular jurisdiction?

RESPONSE: I believe that ATF is authorized to provide aggregate trace data to requesting jurisdictions, including information on top source states for firearms recovered in a particular jurisdiction.

8. To what extent has the amount or type of information provided to jurisdictions pursuant to trace data reports changed since the passage of the Tiahrt amendment?

RESPONSE: The types of information included in the reports has not substantially changed. Although trace studies or reports were not disseminated during 2002-2007, there were several reasons for that result, including budgetary constraints.

9. To what extent does the issuance of such reports conflict the current Congressional appropriations restrictions imposed by the Tiahrt amendment? If there is no conflict, what in your or the ATF's analysis leads to that conclusion?

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RESPONSE: I do not believe that the Tiahrt Amendment prohibits the publishing of reports. In every appropriation since the inception of the Tiahrt Amendment in 2003, Congress has also enacted language requiring that ATF Tracing Studies contain a disclaimer to make it clear that trace data cannot be used to draw broad conclusions about firearms-related crime (See, e.g., Section 621 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006, P.L.109-108). The inclusion of this provision indicates that ATF may publish tracing studies.

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

October 26, 2007

The Honorable Sheldon Whitehouse
United States Senate
Washington, DC 20510

Dear Senator Whitehouse:

I greatly appreciated the opportunity to testify before the Senate Committee on the Judiciary as the President's nominee to be the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives and am providing written responses to your questions posed at the hearing on September 26, 2007.

During the hearing you expressed an interest in ATF's National Integrated Ballistic Information Network (NIBIN) and asked me to respond in writing to a number of questions you have about the program. Please find below my responses to those questions:

Question 1: Please respond in writing about the size of the NIBIN "backlog."

Response: NIBIN provides equipment to over 220 laboratories and police departments throughout the nation. We also provide a network and database for these labs to search for matches. Each laboratory and police department, based on its own funding and priorities, participates in the NIBIN program. Some departments and laboratories analyze almost all recovered ballistic evidence, while others analyze few or none. Since each user handles their own evidence analysis, ATF is not able to determine the size of the national backlog. We could survey our users to get a more complete analysis.

Question 2: Where is ATF in terms of addressing the "backlog"?

Response: ATF's role in the NIBIN program is to provide a network, equipment, a database, and service and maintenance to partner agencies. Each partner agency's role is to utilize the equipment. It is the role of each lab in this process to address its own backlog with its resources. Presently, the backlog at the three ATF laboratories is less than one month, which meets ATF internal timeframes and does not affect ongoing case investigations.

Honorable Sheldon Whitehouse

Question 3: What is the current size of the database?

Response: The current database holds in excess of 1.2 million exhibits.

Question 4: What size is needed to reach a "critical mass"?

Response: With the current technology, critical mass is not a concern. The NIBIN database is operating in an effective manner with the current database size, and additional exhibits only strengthen the effectiveness of the system. The concern, however, is that the present servers for this database are operating on software platforms that are older and no longer supported by their manufacturers. ATF has received a quote for new servers and is in the process of locating funding for this upgrade.

Question 5: What performance goals does ATF have for the development of the database?

Response: We would like to promote and see greater utilization of the technology.

Question 6: Are there any plans to expand NIBIN over the next few years?

Response: ATF continues to look for areas in which we can expand the number of agencies participating in NIBIN. In the past, that meant that each participating agency needed its own equipment. ATF has now developed a more efficient and inexpensive process to participate in NIBIN. ATF, through its own laboratory or paid contractor, can now provide access to NIBIN by entering the data for the agency. This process should allow all police departments and agencies the ability to access NIBIN if they choose. We are also evaluating the possibilities of other technologies or the development of other technologies to increase utilization and efficiency.

Question 7: Does ATF have any plans or capabilities to incorporate the existing image databases from the states that require test-firing such as in New York and Maryland?

Response: It is a violation of Federal law for ATF to keep a national registry of firearms owners, see P.L. 109-108. The legislative databases in New York State and Maryland State contain information on firearms owners. It would be illegal for ATF to maintain a database similar to those in Maryland and New York. Presently,

Honorable Sheldon Whitehouse

ATF allows a one-way connection in which Maryland and New York may access NIBIN's data while blocking any access we would have to their data. If other state and local jurisdictions choose to develop similar databases to those of New York and Maryland, we would allow those states the same access to NIBIN.

On behalf of the men and women of ATF, I want to thank you for the interest you have taken in our agency. If confirmed as Director, I will look forward to working with you in pursuit of our shared goals. Please feel free to contact me should you have any questions.

Sincerely yours,

Michael J. Sullivan
Acting Director

A SUBMISSION FOR THE RECORD

Senator Menendez's Statement for the Record on the Nomination of Michael Sullivan to be Director of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives.
September 26, 2007

Today the Senate Judiciary Committee is considering the nomination of Michael Sullivan to be the Director of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Although I have not yet decided whether to support this nomination, I want to spend a minute discussing some serious problems that currently exist within ATF. Specifically, I want to talk about how we handle ATF's gun trace data.

ATF traces the origins of guns confiscated at crime scenes. Their gun trace database sheds light on how criminal elements circumvent federal and state firearm laws in obtaining their weapons, and provides insight on possible countermeasures to this illicit trade. Sharing this information allows law enforcement officials to place local crime guns in a regional and national strategic enforcement context and allows Federal, State, and local elected officials to develop national, regional, and local strategic responses to gun crime.

Unfortunately, under current law, this sharing does not occur because of a provision called the Tiahrt Amendment. For the past several years, this amendment has been included as a rider in the Commerce, Justice, Science Appropriations Act. It prohibits the disclosure of ATF's crime gun trace data to anyone other than a law enforcement official or prosecutor and then only pursuant to an ongoing, bona-fide criminal investigation within their jurisdiction. The practical impact of the Tiahrt Amendment is that gun trace data is rarely shared.

The Tiahrt Amendment also limits how Federal, State and local law enforcement agencies can use crime gun trace data they are able to obtain. This data can only be used to retroactively investigate crimes that have already been committed instead of proactively preventing gun crimes from happening in the first place.

The restrictions of the Tiahrt Amendment are, in my opinion, quite ridiculous.

It goes without saying that the more we understand a problem and its sources, the more proficient we will be in our attempt to create a solution that works. This is especially true in the case of gun violence. The more we understand how criminal elements acquire guns, the better we can keep guns out of the wrong hands, without infringing on the rights of law-abiding citizens.

Why, then, is this information being concealed from law enforcement? It certainly contains no classified or sensitive national security material. The taxpayers have paid for information to be collected and the reports to be prepared, so why do they not deserve to benefit from their collection? Why is it illegal for Federal, State and local policymakers and law enforcement officials to use this data in the way it was envisioned– to better understand and combat the scourge of gun violence that plagues our cities?

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Denying police access to this information about crime gun traces helps no one but the bad guys. Our families' safety should never take a backseat to the demands of radical interest groups seeking only to further their own narrow agenda.

Reversing the effects of the Tiahrt Amendment should be a national priority. I know it will have a great impact in my home state of New Jersey. I am proud to say that New Jersey has some of the toughest gun laws in the country. Unfortunately, however, the gun laws of our neighboring states are not so strict. As a result, approximately three out of every four guns recovered from crime scenes were purchased out of state. Access to the ATF's gun trace data would allow New Jersey police to figure out how the guns are entering the state and, more importantly, what to do to stop them.

As we consider the nomination of Michael Sullivan to be the Director the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives, I think we need to give some serious thought to the way we use—or, in this case, don't use—our gun trace data. I believe its time to do the right thing for law enforcement and for the American people by reversing the effects of the Tiahrt Amendment.

NOMINATION OF RONALD JAY TENPAS, TO BE ASSISTANT ATTORNEY GENERAL FOR THE ENVIRONMENT AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE; JOSEPH N. LAPLANTE, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW HAMPSHIRE; REED CHARLES O'CONNOR, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION; THOMAS D. SCHROEDER, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA; AMUL R. THAPAR, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY

WEDNESDAY, OCTOBER 24, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, Pursuant to notice, at 10:05 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senator Cornyn.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. The hearing will come to order. I think what I will do, is call on the Senators who are present to speak to the nominees from their home States before I make an opening statement. I have four very busy and distinguished Senators in front of me who don't need to sit through my opening statement and would, I'm sure, like to move on to other business.

So is there an order of precedence that you would like to pursue?

[No response].

Senator WHITEHOUSE. By seniority, then.

Senator Gregg of New Hampshire.

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PRESENTATION OF JOSEPH N. LAPLANTE, NOMINEE TO BE DISTRICT JUDGE FOR THE U.S. DISTRICT OF NEW HAMPSHIRE BY HON. JUDD GREGG, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator GREGG. Thank you. Thank you, Senator Whitehouse. I appreciate your holding this hearing, and Senator Cornyn. It's a pleasure for myself and Senator Sununu to present to the committee today an extraordinarily talented individual, Joe Laplante, who has agreed to serve as the Federal judge from New Hampshire, Federal District judge.

He is joined by his wife, Carol, and his children: Marie, Marcel and Andre, along with his parents and his sister.

You know, we are a small State like Rhode Island; everybody knows everybody in New Hampshire and you go by your reputation. Joe's reputation is extraordinary. He is a Senior Assistant U.S. Attorney. He does the trial work at the U.S. Attorney's office. Prior to that, he was in the Attorney General's Office. He has a tremendous record of practice in New Hampshire.

He is supported by the Governor, who is a Democrat, by the way. He is supported by the Congressman, who is a Democrat, and he is supported by John and I, who are obviously Republicans. He has a cross-section of support that goes deep within the community which he represents, which is the State of New Hampshire, but especially the city of Nashua, where he is from. He has been extremely active in the city of Nashua.

And the State, generally, as a community, feels very proud that somebody like Joe is willing to take on the job of Federal judge. He is the type of person we need in the judiciary: he is fair, he's judicious, he's tough, and he will bring common sense to the bench. He also has some other unique qualifications. He went to Georgetown here, and Georgetown Law.

While he was at Georgetown, he received the award from the college for being the individual most respected by the faculty and students, which was a reflection of his future capabilities. In addition, he is a boxing referee and has, in fact, refereed national boxing events, so he is a natural for being a Federal judge.

[Laughter.]

I can't think of any better qualification. He will know how to keep the courtroom under control.

And so it is a great pleasure to present him to the committee, and I certainly hope he will receive prompt and affirmative confirmation. Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Gregg.

Leader McConnell, if I may, I will allow Senator Sununu to conclude the New Hampshire portion, if that's all right, and then we can go on to you.

Senator Sununu.

PRESENTATION OF JOSEPH N. LAPLANTE, NOMINEE TO BE DISTRICT JUDGE FOR THE U.S. DISTRICT OF NEW HAMPSHIRE BY HON. JOHN E. SUNUNU, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator SUNUNU. Well, I appreciate that very much, Mr. Chairman. Given the reference to "boxing referee", perhaps the only posi-

tion Joe Laplante might be better suited for is chairman of the Judiciary Committee from time to time, notwithstanding your great leadership here in the committee today.

Senator Gregg outlined Joe Laplante's great breadth of experience gained in a relatively short period of time, as a prosecutor working in the Attorney General's Office, working in the U.S. Attorney's Office, dealing with very important cases, not just of importance to New Hampshire, but regional importance, dealing with crime, drug enforcement, and other issues that have a broad effect on our country—professional experience, but also a great perspective of community and public service.

Joe has served on the board of the New Hampshire Charitable Foundation, the largest charitable organization in New Hampshire. He is extremely well-known in the community and within the Bar Association in New Hampshire for real dedication to his profession. When you have someone that has been able to balance the professional with the community and family life, I think you get someone with the perspective and experience that will really make a difference on the bench.

I think the breadth of support that Senator Gregg mentioned across party lines, across political lines, is testament to Joe's great reputation. We're pleased to be here to support his nomination.

Senator GREGG. I would just say as a footnote, that the only people in the New Hampshire community who may not support him, are the 200 or so folks who are serving time in Federal prisons because of his excellent work.

Senator WHITEHOUSE. Thank you, Senator Gregg. Thank you, Senator Sununu.

We are graced by the presence of the Republican Leader of the U.S. Senate, Senator McConnell.

PRESENTATION OF AMUL R. THAPAR, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY BY HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Thank you, Chairman Whitehouse. I'm particularly pleased to be here this morning on behalf of a truly outstanding Kentuckian. It is my honor and privilege to speak on behalf of Amul Thapar, the President's nominee to be the next U.S. District Judge for the Eastern District of Kentucky.

During the course of these hearings, this distinguished committee will learn what I know: without a doubt, Amul Thapar has the qualifications, the intellect, the integrity, and the judicial temperament to make an excellent addition to our Federal judiciary.

Amul graduated from the law school at the University of California after receiving his undergraduate degree with honors from Boston College and he clerked for Judge Nathaniel Jones of the U.S. Court of Appeals for the Sixth Circuit, and Judge Arthur Spiegel of the U.S. District Court of the Southern District of Ohio. From them he learned firsthand how a judge presides in a just and fair manner, and with a measured temperament.

An accomplished lawyer in private practice, Amul has managed and litigated complex cases on behalf of major corporations in both Federal and State courts. Amul served as an Assistant U.S. Attor-

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ney for several years, first in Washington, DC from 1999 to 2001, and then in Cincinnati from 2002 to 2006. The greater Cincinnati area includes the suburbs of northern Kentucky, where Amul made his home in these years and strengthened his ties to Kentucky's communities.

As an Assistant U.S. Attorney, he successfully prosecuted a wide variety of Federal crimes with an emphasis on public corruption and homeland security.

He also served as an Adjunct Professor at Georgetown University Law Center here, and again at the University of Cincinnati College of Law, where he taught Federal criminal practice. After years of experience as an Assistant U.S. Attorney, Amul rose through the ranks to win confirmation as the U.S. Attorney for the Eastern District of Kentucky in early 2006.

Since then, as the chief Federal law enforcement officer for half of our State, he has become one of the most respected U.S. Attorneys in the country. He was appointed as one of only 17 nationwide to serve on the Attorney General's Advisory Committee of U.S. Attorneys. As the chairman of the Controlled Substances and Asset Forfeiture Subcommittee, Amul has focused on prosecuting prescription narcotics abuse in Kentucky.

Internet safety is also an important issue for Amul. He has traveled throughout his district, speaking to schools, churches, and civic groups on the dangers of online child pornography and child exploitation. He has visited all 67 counties in his district to reach out to State and local law enforcement, building relationships and working to root out public corruption, vote-buying, and racketeering.

Amul not only works hard at the office, he volunteers in his community as well. Several years ago he founded a brand-new chapter of the well-respected Street Law program, which sends law school students into underprivileged high schools to teach the basic underpinnings of our legal system. Hundreds of students have benefited from Amul's initiative, and the program is larger and more successful than ever after 12 years.

In addition to these myriad accomplishments, Amul has a wonderful family, who are all very proud of him and all he has achieved. All of them, I think, are here: his wife, Kim, their sons, Zachary and Nicholas, their daughter, Carmine. We are also joined by Amul's mother, Veena Bhalla, his father and stepmother, Raj and Rama Thapar, his mother-in-law, Joan Schulte, his sister, Vandana Thapar, and his uncle, Anand Bhasin.

I want to take special note of Veena Bhalla's presence at the hearing today. Ms. Bhalla is a civilian social worker with the U.S. Army who works to help transition soldiers returning home from the battlefield. She chose to sell her successful restaurant and serve her country this way after the 9/11 attacks. She has traveled from Italy to be here to support her son, and we are glad she can make it.

Ms. Bhalla, thank you very much for your service as well.

With so many good people behind him, clearly Amul Thapar is the right man to serve as the next Federal judge for our State's Eastern District. His time in the U.S. Attorney's Office and as a clerk for two respected Federal judges has given him an under-

standing of the day-to-day operation of Federal courts. He has risen through the ranks to the top of his field to become a stellar prosecutor, all while maintaining his reputation as a man of unquestioned ethics and integrity.

If confirmed, Amul Thapar will scrupulously interpret the law, while remaining impartial and fair. I am confident he has the wisdom and integrity to excel as a Federal judge.

I'd like to add just one more thing. As you know, this committee has received letters from both the National Asian-Pacific American Bar Association and the North American South Asian Bar Association strongly in support of his nomination. Both Bar Associations point out that, if confirmed, he would be the first South Asian American Article 3 judge in the history of our country. I am sure this committee appreciates that being brought to its attention.

I appreciate this committee's expeditious handling of the nomination and look forward to confirmation. He is an outstanding individual who will make a great Federal judge.

Senator WHITEHOUSE. Thank you, Leader McConnell.

In the tradition of keeping the States together, I would call on Senator Bunning.

PRESENTATION OF AMUL R. THAPAR, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY BY HON. JIM BUNNING, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator BUNNING. Thank you very much, Mr. Chairman and Senator Cornyn. Thank you for having the hearing today.

I am honored to be here today with Senator McConnell to introduce Amul Thapar. Amul is one of the brightest lawyers in Kentucky. He is well-qualified to be a U.S. District Court Judge.

Amul has worn a wide range of legal hats throughout his career: he has clerked, as Senator McConnell said, for two judges on the District and Appellate courts; he has practiced at one of the top law firms in the country; he has successfully prosecuted many Federal cases; and he has spent time teaching in law school classrooms. He has served the Nation and Kentucky with distinction as the current U.S. Attorney for the Eastern District of Kentucky.

The ABA has given Amul its highest rating. Most importantly, Amul has the character and integrity to serve as a Federal judge with distinction and honor. His wife Kim and three children, and many others, as Senator McConnell said, are here with him today. They should be proud of the accomplishments of this fine lawyer, husband, and father. We have the finest judicial system in the world because of people like Amul, who are willing to serve the interests of justice above their own personal interests.

I would like to thank Senator Whitehouse and the Judiciary Committee for holding this hearing today. I would also like to thank Amul for his desire to continue to serve our Nation and the people of Kentucky in this very important job.

Thank you very much.

Senator WHITEHOUSE. Thank you, Leader McConnell and Senator Bunning. I appreciate your testimony very much.

I will now call on Senator Dole.

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PRESENTATION OF THOMAS D. SCHROEDER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA BY HON. ELIZABETH DOLE, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator DOLE. Thank you very much, Senator Whitehouse. Thank you for holding today's hearing. It's an honor, indeed, for me to introduce to the committee Thomas David Schroeder, the President's nominee for U.S. District Judge for the Middle District of North Carolina.

Mr. Schroeder is an accomplished attorney who brings a highly impressive record of legal achievement and dedicated community service before this committee. He is an outstanding choice for this important judicial post. Tom attended the University of Kansas and the University of Cincinnati's Conservatory of Music.

I am pleased to note that, in addition to Tom being a fellow KU alum with my husband, Bob Dole, his parents resided in Bob's hometown of Russell, Kansas. It was after Tom's days as a Jayhawk that he attended Notre Dame Law School on an academic scholarship, where he was editor-in-chief of the Notre Dame Law Review. After receiving his law degree, Tom went on to clerk on the prestigious U.S. Court of Appeals for the District of Columbia Circuit for the late Honorable George McKennon.

Upon completing his clerkship, Tom started in private practice with the prominent North Carolina law firm of Womble, Carlyle, Sandridge & Rice, where today he is the leading partner and former vice chairman of the firm. Tom has been a practicing civil litigation attorney now for 23 years. He has briefed and argued many cases in the U.S. Court of Appeals for the Fourth Circuit and the North Carolina Court of Appeals. He has handled matters in all Federal trial courts in North Carolina and in the U.S. Court of Appeals for the Eleventh and DC Circuits.

Additionally, Tom has been at the forefront of some of the largest litigation cases in North Carolina, and the country. He has handled cases with millions—and even billions—of dollars at stake for his clients and has received the acclaim of his peers. He received the top rating by the Best Lawyers in America for 2006 and 2007. He was selected as a North Carolina Super Lawyer by Law and Politics magazine, and is an AV-rated attorney, the highest rating given by Martindale Hubble.

It should be noted that Tom's firm, Womble Carlyle, is the largest and one of the oldest law firms in my State. Womble Carlyle is an American Lawyer Top 100 ranked law firm, and it was the first-ever law firm to receive the Thurgood Marshall Scholarship Fund's Corporate Leadership Award in 2003.

This firm has a long history of giving back to the communities it serves, and during Tom's tenure he has been integral to those efforts. Tom was one of the most senior partners involved in Womble Carlyle's pro bono work on behalf of victims of Hurricane Katrina. He has devoted dozens of hours of his own time to helping families with damaged and destroyed homes to obtain clear title so that they can gain access to rebuilding funds.

Womble Carlyle has assisted hundreds of Katrina victims in this work, garnering pro bono awards from Southeastern Louisiana Legal Services and the Louisiana State Bar Association. This ac-

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complishment is even more remarkable in light of the fact that the firm has no offices in Louisiana.

Despite the demands of a top-tier law practice, Tom is personally involved with his community in Winston-Salem. In addition to working with his church, he has given his time to Forsythe County Court Volunteers, working with first-time offender youths to help turn their lives around at the earliest opportunity. He has also volunteered with the local District Attorney's Office to assist in prosecuting sexual abuse cases involving minors.

In addition, Tom has advocated for law-related education in North Carolina's public schools through his work with the Phi Alpha Delta Legal Fraternities Educational Programs.

Mr. Chairman, the folks who know Tom, including those with whom he has practiced, are unreserved in their support of his nomination. To quote one colleague, "Tom is a great lawyer. Until he was nominated by President Bush, I never knew of Tom's politics. I do know his integrity, his professionalism, his knowledge of the law, and his commitment to justice. He is a kind and caring man who embodies the best in a civilized person committed to the rule of law and love for humanity."

Mr. Chairman, those are the words of former longtime Democratic Governor of North Carolina, Jim Hunt. That description is in line with everything I know about Tom Schroeder: impressive knowledge of the law, commitment to the rule of law, and an even judicial temperament.

Of course, those who know Tom best are the ones who sustain him in all of his professional and charitable work, his wonderful family, who join us here today. His wife, Kem, is an attorney and former clerk for the Honorable Clyde Hamilton, who is now on the Fourth Circuit Court of Appeals. She is the president of the Winston-Salem Children's Museum, a local charitable institution devoted to children's literacy.

Their daughter, Katie, is 17 and a junior at Salem Academy, where she is a board member on her school's Habitat for Humanity Project. And son, Cy, is 15 and a sophomore at Forsythe Country Day School. Cy is currently working toward completion of his Eagle Scout award through the Scout troop where, I'm sure you're not surprised to know, that his dad is actively involved.

We also are joined today by Tom's brother, Paul Schroeder and his wife Peggy, from Hershey, Pennsylvania. Mr. Chairman, Tom comes before the committee with excellent credentials. I know that he will serve our Federal judiciary with honor and distinction. I am proud to give his nomination my wholehearted endorsement and I hope the committee will act with all due speed on his nomination.

Thank you very much for this opportunity.

Senator WHITEHOUSE. Thank you, Senator Dole.

Consistent with the practice today of allowing home State Senators to testify together, with your courtesy, Senator Hutchison, I will now call on Senator Burr.

PRESENTATION OF THOMAS D. SCHROEDER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA BY HON. RICHARD BURR, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator BURR. I thank you, Mr. Chairman. I thank the indulgence of my colleagues. What more can be said about Tom Schroeder that Senator Dole has not covered? Let me say, it is a unique opportunity for me because Tom is a friend, he is a neighbor. I say "neighbor" because he is from Winston-Salem, North Carolina, where I am. In fact, we attended the same high school. And while he is a few years younger than I am, when you see him you will realize that he is much grayer than I am. But I won't hold that against him.

Senator Dole said his family is here today, and I think that's most appropriate because Tom, with the great legal experience and education that he has, is just as committed to the growth of his family and to his family's impact on the community. Kem, his wife, Katie, daughter, and Cy, son, made the trip from Winston-Salem today, reluctantly missing school in both of them's case. I think if it were my children, they would jump on the opportunity.

But from the activities that you hear from these kids, it makes you realize that the next generation is prepared for what we leave them, and in many cases we are here today to make sure that, in fact, we put the best and the brightest on our Federal bench.

Tom has been nominated to serve on the U.S. District Court in the Middle District of North Carolina, with a rich history of superior leadership. Over the years, this particular District Court has earned a strong reputation as a fair bench, consisting of qualified and impartial judges. Tom will no doubt continue that legacy.

You have heard from Senator Dole these impressive credentials. But during Tom's high school years, he had the honor of being a member of the Winston-Salem Symphony Orchestra. With such a talented musician, he earned a full scholarship to the University of Cincinnati's College of Conservatory Music.

Now, that is tough for a guy from Winston-Salem, where we have the second-best school of performing arts in the North Carolina School of the Arts, but I think it tells you a little bit about his passion for the trumpet. Soon, he found out that that passion was trumped by his interest in the law, and Tom transferred to Kansas University. He earned his law degree at Notre Dame and, as Senator Dole said, was editor-in-chief of the Notre Dame Law Review.

Tom is no stranger to the Federal courthouse, with his time in Washington, DC following law school on the U.S. Court of Appeals for the DC Circuit, one of the most competitive clerkships that existed in this country. He was admitted to every level of the Federal bench and appeared in several Federal courts across the country. He was listed Best Lawyers in America in 2006, as well as what Senator Dole said, North Carolina Super Lawyer. That ought to be enough to clinch the deal right there.

In addition to his remarkable professional qualifications, let me say he is a good moral man. He is of good character. He is a leader in his community. Simply put, Tom Schroeder is a good man. As policymakers, we debate issues that affect the American people, but every day judges see how these laws we are responsible for

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making are applied to life. They do not have the benefit of changing laws based upon who appears before them.

Our obligation to our constituents is to put fair-minded and qualified judges on the bench who we are confident will apply the law this body passes in an impartial manner. By confirming Tom Schroeder as U.S. District judge, we are fulfilling a very important obligation that we have.

Mr. Chairman, with a few minutes left, let me say that I hope this committee will continue to consider additional North Carolinians for the Federal bench. Tom Farr and Bob Conrad are currently queued, nominated by the President, awaiting hearings for positions on the Federal bench. I encourage the members of this committee to consider their pending nominations as quickly as you can.

Mr. Chairman, you know North Carolina has much talent to offer. Tom Schroeder is a true statement to the well-rounded and well-qualified individuals that our great State has to offer the Federal bench. I hope this committee will give all of them the benefit of a hearing.

I urge my colleagues to support Tom Schroeder's nomination to the U.S. District Court for the Middle District of North Carolina, and I thank the Chair and I thank Senator Cornyn for allowing me to be here to speak on his behalf.

Senator WHITEHOUSE. Thank you, Senator Burr.

Senator Hutchison, I appreciate your patience with this. I do think that it is important to allow Senators from the same home States testify together, if for no other reason than it makes a better DVD for the families later on.

[Laughter.]

Senator WHITEHOUSE. And so you have been very patient, and I appreciate it. I will call on you.

PRESENTATION OF REED CHARLES O'CONNOR, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT BY HON. KAY BAILEY HUTCHISON, A U.S SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Of course. Of course. Well, I'm very pleased to be here to introduce fellow Texan, Reed O'Connor, as the nominee for U.S. District judge for the Northern District of Texas. I also welcome his wife, Tammy, his children, Caitlin and Maggie, and his mother, Eileen.

Reed is very well-known to this committee. He served on the Judiciary Committee staff. He is a nominee that I think everyone is going to feel comfortable with because he has been counsel on this committee to both Senator Cornyn, and before that, to Orrin Hatch. He is now Senator Cornyn's chief counsel, so I know that Senator Cornyn will vouch for him personally, and will also be able to speak on his behalf.

Reed has had a lot of other experience that is important as well. He has been an Assistant U.S. Attorney and an associate at Vincent & Elkins law firm, so while he knows the Judiciary staff and knows the constitutional issues that are so important for a Federal judge, he has also been on the ground.

He was Assistant U.S. Attorney for the Northern District of Texas, and before that, a State prosecutor in the Tarrant County District Attorney's Office in Ft. Worth for 4 years.

His private practice was with Vincent & Elkins law firm for 5 years, a top national firm where he did civil litigation. He has also participated in significant pro bono work, which I think is important for a Federal judge. He volunteered for the Houston Volunteer Lawyers Program and the Legal Line Program, which are sponsored by the Houston Bar Association, and he also worked with teenagers in the North Richland Hills Teen Court Program, a program in the Northern District of Texas.

Reed has demonstrated his strong intellect through academic credentials, graduating with a Bachelor of Science degree at the University of Houston, and then graduating summa cum laude from South Texas School of Law with the second-highest grade point average in his class.

I am pleased that he meets the high standards that we hold. The Northern District is a great district, with distinguished judges. I think Reed O'Connor will fit very well because he has a record of public service, private practice, trial experience, and also prosecutorial experience. I think this diverse background, along with his experience in the U.S. Senate, will make him a wonderful candidate for Federal judge, and I hope that we can expeditiously refer him to the Senate for confirmation.

Thank you.

Senator WHITEHOUSE. Thank you, Senator Hutchison. Thank you again for your patience.

Senator Cornyn.

PRESENTATION OF REED CHARLES O'CONNOR, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT BY HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Mr. Chairman. I'm pleased to be here with Senator Hutchison to heartily endorse the nomination of Reed O'Connor to be a U.S. Federal District judge for the Northern District of Texas.

As the Chairman and our colleagues know, my background is one as a State District court judge and State Supreme Court judge. We actually call ourselves, tongue-in-cheek, Members of Congress who are former judges, as part of the "Recovering Judge Caucus". But I have a great affection for not only the legal profession, but for the men and women who serve in the Nation's judiciary, both at the State and the Federal level. Reed O'Connor served as the counsel to Chairman Hatch when he was chairman of the Senate Judiciary Committee and has served as my chief counsel since 2005, therefore I am unabashedly biased in my recommendation.

I also want to point out that Senator Hutchison—and I have continued, since I succeeded Senator Graham, with the Federal Judicial Evaluation Committee process, where we get the leading members of the Bar throughout the State of Texas to evaluate all nominees. We have consistently sent to the President names based on merit, and Reed's nomination fits in that tradition.

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I would also say that it is important to me personally, and I would think to the Chairman and to all members of the Judiciary Committee, that we not disqualify outstanding lawyers who volunteer and sacrifice so much to serve in the Senate and on the Judiciary Committee when it comes to considering them for nominations. They should not get a leg up, but they should not be disqualified either. So I am proud that Reed's nomination is being made today based on what he brings to the table and what he has to offer.

I can tell you personally that Reed is known throughout his career as somebody who works well with others—not always easy for lawyers—no matter what their walk of life, and treats everyone with fairness and respect.

I know the Judiciary Committee staff and the members of the committee will agree with me when I say that he brought his personable demeanor and commitment to fairness to work day in and day out on the Judiciary Committee, often daily working closely with staffers across the aisle to forge bipartisan consensus on significant national issues.

Senator Hutchison has appropriately noted his extensive litigation experience, which, as I said, as a former judge, is important to me. We want somebody who has actually been in the arena who knows what they're supposed to do, and can do it well. But Reed's also been a very important part of my efforts, as well as Senator Hatch's, to work on a bipartisan basis on issues of national importance. For example, he's worked with Chairman Leahy's office on passing open government legislation, which I am proud to co-sponsor with Senator Leahy and which we have advanced.

He has also worked closely with Senator Feinstein's staff and Senator Schumer's staff to draft legislation to combat gang violence, and has advised me on a number of other complex legal and policy issues, including Federal criminal and constitutional law, immigration, national security, and international human rights issues.

Reed is also highly respected among his peers in the Northern District Bar, and this shines through in the numerous letters of support that he has received. For example, Jeffrey Kurritan, a partner at Kurritan & Gordon, notes his dedication to the legal profession is "matched only by his always-present compassion and sense of duty to do the right thing."

Andrew Beech, an Assistant District Attorney in Dallas County, remarked that "Reed's reputation among the North Texas legal community is outstanding and above reproach. His demeanor and temperament are ideal for a judicial candidate, and his dedication to justice is unmatched. He has a personality that will serve the Federal bench well."

Betty Arvin, Deputy Chief of the Criminal Division of the Tarrant County District Attorney's Office, noted that "Reed has served in many diverse roles as an attorney. To each endeavor, he has brought intelligence, commitment, and outstanding judgment."

And finally, Kurt Stallings, Assistant District Attorney in Tarrant County, remarked that, "In 20 years of legal practice, civil and criminal, Federal and State, I've never worked with an attorney as mentally agile, personally disciplined, and consistently sensible as Reed O'Connor," strong praise, indeed.

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But as Senator Hutchison notes, beyond his work experience he has been very active in providing legal services to the poor as both an instructor and judge for the North Richland Hills Teen Court program. As a full-time attorney and father to his young children and a husband to his wife, it is telling that Reed took time to impress the importance of public service and respect for the justice system to those troubled young people.

Finally, let me say that in addition to his wealth of civil and criminal litigation experience and outstanding service to the U.S. Senate, it's easy to see why the American Bar Association voted Reed "Unanimously Well Qualified", which's the American Bar Association's highest rating.

I know Reed personally as a capable and outstanding lawyer who maintains the highest ethical standards, and I believe he exceeds the high standards we hold for all of our judicial nominees, and appropriately so. I firmly believe, Mr. Chairman, that he will make a fine judge for many years to come.

I want to express my gratitude to you, Mr. Chairman, for presiding over today's hearing, and to Chairman Leahy for scheduling it. I commend and enthusiastically recommend this nominee to all our colleagues. Thank you.

Senator WHITEHOUSE. Well, I am very happy to do it, Senator Cornyn. I very much appreciate your testimony on behalf of this nominee.

What we are going to do, is to rearrange the table so that we can consider the nomination of Ronald Tenpas for a position in the Department of Justice. I will make a brief opening statement after that, and I suspect Mr. Tenpas will make a brief opening statement after that. Then whatever Senators are present can engage in a colloquy with the candidate for that position. I expect that that will take all of 15 to 20 minutes. So for those who have children in the room who wish to maybe take them for a walk in the hallway or whatever, if you are here for a judicial candidate, you will have a little window to do that. But I ask your patience while that takes place.

Then we will call forward at the end of that the judicial nominees and proceed to the end of the hearing.

Senator CORNYN. Mr. Chairman, may I be recognized for a brief unanimous consent request?

Senator WHITEHOUSE. Absolutely.

Senator CORNYN. Senator Specter, the Ranking Member, has asked me to ask unanimous consent that his opening statement on the nomination of Ronald J. Tenpas be accepted as part of the record following, of course, the Chairman's remarks.

Senator WHITEHOUSE. Without objection, it will be so.

Senator CORNYN. Thank you.

[The prepared statement of Senator Specter appears as a submission for the record.]

[Pause]

Senator WHITEHOUSE. Will the committee room please come to order?

Ronald Tenpas, will you please stand to be sworn?

[Whereupon, the witness was duly sworn.]

Senator WHITEHOUSE. Thank you very much. Please be seated.

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Without objection, I will enter into the record a statement of Senator Patrick Leahy, the Chairman of the Senate Judiciary Committee, dated October 24, 2007.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator WHITEHOUSE. As the next order of business, Mr. Tenpas, would you care to introduce family of yours who may be present? We would be honored to have them presented to the Senate Judiciary Committee.

Mr. TENPAS. Thank you very much, Senator. I would like to recognize my wife, Catherine Tenpas, my son, William, identifiable by the flailing shirt that seems incapable of remaining tucked, the tie that seems determined to slide down.

Senator WHITEHOUSE. I have a 14-year-old, Mr. Tenpas, and he looks entirely appropriate.

Mr. TENPAS. Right.

[Laughter.]

Well, he is a delight and I'm very pleased to have him here. I should note that, apropos some of the earlier comments, we have a 12-year-old, Nathaniel, as well who, last night, facing the prospect of missing four exams, decided that he should go to school rather than come. I hope that is not a comment on his views of the nomination.

Senator WHITEHOUSE. It will be easy, I'm sure, is what he thinks.

Mr. TENPAS. We are missing him, but wish very much that he could be here as well. Thank you.

Senator WHITEHOUSE. Well, thank you very much.

PRESENTATION OF RONALD JAY TENPAS, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE ENVIRONMENT AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE BY HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. The sole witness in our first panel today is Ronald Tenpas, whom President Bush has nominated to be the Assistant Attorney General for the Environment and Natural Resources Division. Mr. Tenpas has been acting in that capacity since May of 2007. Before that, he was an Associate Deputy Attorney General, a U.S. Attorney for the Southern District of Illinois, and an Assistant U.S. Attorney.

Mr. Tenpas has an impressive background and has been nominated to an important post. The position is especially important given the Bush administration's extremely disappointing record on environmental issues. Just by way of example, the President pulled the United States out of the Kyoto Treaty; administration officials revised government reports to dismiss concerns raised by climate scientists regarding global warming; the administration pushed to perform drilling for oil and gas in the Arctic National Wildlife Refuge; and the Department of Interior issued regulations allowing the practice of mountaintop mining to continue and expand, and that is just a small sample.

I understand well how important a strong law enforcement presence is when it comes to environmental issues. During my tenure

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as U.S. Attorney for Rhode Island, I worked to secure the largest environmental find in Rhode Island history following the massive North Cape oil spill that dumped 828,000 gallons of home heating oil into Block Island Sound. This litigation sent a powerful message, and I'm proud to say that we have not had a major oil spill in the area since.

I was also proud to join, during my time as Rhode Island's Attorney General, in a Justice Department Clean Air Act lawsuit that has led recently to a $4.6 billion settlement with American Electric Power, a huge step in the long, hard fight to cut pollution and greenhouse gas emissions in this country.

Rhode Island has also been a leader in the fight to raise awareness about the public health dangers of lead poisoning, particularly in our urban environments. During my tenure as Attorney General, we brought a public nuisance action against the companies that manufactured lead-contaminated paint, an innovative approach that, after many years and two trials, finally has resulted in a jury verdict last year that the paint companies must participate in abating the damage that they caused.

That decision was a true victory for Rhode Island's children, the first of its kind in the Nation. Today we are moving ahead on abatement plans to ensure that our State's homes are safe for our children and their families.

Today is an opportunity for the committee and the American people to hear from the Department of Justice's top environmental officer, and I look forward to Mr. Tenpas' testimony. We need strong and independent voices in the Department's leadership ranks, ones who will put the rule of law first and who will do their duties. We need someone who will stand up to political pressure from the White House if it comes and who will stand for strong enforcement of our environmental laws.

Regarding the judicial nominees, as my colleagues know, voting to confirm an individual to the Federal bench is one of the most important and lasting decisions a Senator can make. I think I will defer the remainder of my remarks on them until we gather that panel.

So without further ado, Mr. Tenpas, if you would care to make any opening remarks, we would be delighted to hear from you.

STATEMENT OF RONALD JAY TENPAS, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE ENVIRONMENT AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE

Mr. TENPAS. Thank you, Senator. I'd like to thank you for chairing this hearing. Thanks to Senator Cornyn for being here and for participating with Senator Specter to move in comments of introduction on the record on my behalf.

I am honored by the nomination and obviously would like to thank the President for the prospect of having a further opportunity to serve. If confirmed, this will certainly represent the high point for me of what has been 10 years of public service in the Department over the last decade.

I thought I might take just a couple of moments to add a bit to my profile and talk about why the possibility of serving as the As-

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sistant Attorney General for the Division is one that I find so appealing and to be such an honor.

I was born and raised in Erie, Pennsylvania. That was a city that owed its historical existence to a tremendous natural resource: the lake. But the days I was growing up there were not quite as sanguine. Much of the debate at that point was about, is the lake dead or is it merely dying? These were the famous days when rivers were catching on fire, and such. So it is always just a tremendous reminder to me, when I go back to visit now, and see the way that precious natural resource has been restored. It is a very vivid evidence to me of the important things that can be achieved by lawyers in our division, working cooperatively with the various agencies. It is a very personal reminder to me.

I spent a couple of years clerking. I spent some time in private practice, but my last 10 years has been with the Department of Justice. As you noted, I have had six and a half years as a line AUSA in the Districts of Maryland and Florida.

I was, 2 years, the U.S. Attorney in the Southern District of Illinois. Although Senator Durbin is not here today, I'd like to just note for the record my thanks. He was quite helpful in my confirmation to that post and he was graciously open to the possibility of somebody not from the State of Illinois coming to the State to work as the U.S. Attorney.

I have spent a little bit of time since then in the Department working on policy matters, things related to, for example, the rules process by which civil and criminal rules are amended. I was the Director of the President's Identity Theft Task Force that produced a report from 17 agencies on the problem and scope of identity theft.

So I think, hopefully, what that communicates is, I have an enforcement background. I am familiar with, and committed to, the principles of the fair and full enforcement of the law, and to the principles of defending the interests of the United States.

I've had the good fortune to be acting for a few months now, and I have seen, in that capacity, something that I well knew from my own line experience and as being U.S. Attorney, and that is to see the skill and dedication of the career folks within the division.

So, I am also honored and moved by the prospect of being a steward of the division and having the chance to serve, and to serve by and serve with folks who have made it their professional life to try to serve our country and to serve the environment.

The division has a broad wingspan: it enforces various environmental laws; it defends agencies in their actions when sued; it represents the interests of tribes because of the United States trustee relationship with the tribes; it acquires lands for our agencies. For example, when Federal judges need new courthouses, there are a group of attorneys in the division who do the work to help acquire that land, particularly if condemnation is required. The work is civil and criminal, both, trial and appellate, offensive suits by the United States, defensive work of the agencies. So, it is a remarkable collection of work they do and it's a terrific collection of attorneys.

Let me just wrap up by saying, I look forward, if fortunate enough to be confirmed, to the prospect of working with those at-

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torneys over the coming months. I think any attorney would be honored at the prospect of working to preserve our natural heritage and our environmental resources, leaving something for my two sons and their generation.

Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Ronald Jay Tenpas

2. **Position**: State the position for which you have been nominated.

   Assistant Attorney General, Environment and Natural Resources Division, Department of Justice

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Department of Justice
   Office of the Assistant Attorney General
   Environment and Natural Resources Division
   Room 2141
   950 Pennsylvania Avenue, N.W.
   Washington, D.C. 20530

   Potomac, Maryland

4. **Birthplace**: State date and place of birth.

   DoB: 1963
   Place: Erie, Pennsylvania

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

Status:	Married
Spouse:	Kathryn Dunn Tenpas
Maiden:	Kathryn Dunn
Occupation:	College Professor
Employer:	University of Pennsylvania Washington, D.C. Semester Program 1608 Rhode Island Ave., NW, 3d Floor Washington, D.C. 20036

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Note: My spouse is the only University of Pennsylvania employee working at the above address. General address information for the University of Pennsylvania department that employs her is as follows:

University of Pennsylvania
Department of Political Science
217 Stiteler Hall
Philadelphia, PA 19104-6215

Number of Dependent Children: Two

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

University of Virginia Graduate School, 9/88-5/90 – no degree; while enrolled at the University of Virginia Law School I simultaneously pursued graduate work toward an M.A. in Philosophy. I completed the requisite coursework for the M.A. but did not write a Master's thesis so did not earn a degree.

University of Virginia, 9/87-5/90, J.D. awarded 5/90

Oxford University, 10/85-6/87, B.A. awarded summer 1987, Philosophy, Politics and Economics

Michigan State University, 9/81-3/85, B.A. with High Honors awarded 3/85, International Relations

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

5/07-Pres. Acting Assistant Attorney General
Environment and Natural Resources Division, Department of Justice
950 Pennsylvania Avenue, N.W., Room 2141
Washington, D.C. 20530

1/06-Pres. Federal Bar Association
Board of Governors, Maryland Chapter (no fixed address)

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11/05-5/07	Associate Deputy Attorney General Office of the Deputy Attorney General, Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530
11/03-11/05	United States Attorney Southern District of Illinois Nine Executive Drive Fairview Heights, IL 62208
9/02-11/03	Federal Bar Association Board of Governors, Maryland Chapter (No fixed address)
8/99-11/03	Assistant United States Attorney United States Attorney's Office, District of Maryland 6500 Cherrywood Lane Greenbelt, MD 20770
9/2000-9/01	West Montgomery County Citizens Association – Board of Directors (Neighborhood association) (No fixed address)
1998-1999	Federal Bar Association Board of Directors, Tampa Bay Chapter (No fixed address)
4/97-8/99	Assistant United States Attorney United States Attorney's Office, Middle District of Florida 400 N. Tampa Street, Suite 3200 Tampa, FL 33602
9/96-5/99	Hyde Park Preservation, Inc. – Board of Directors (Neighborhood association) (No fixed address)
9/94-12/98	Florida Rhodes Scholarship Committee, Committee Secretary (96-98) (No fixed address)
11/93-4/97	Associate Carlton, Fields Law Firm Corporate Center Three 4221 West Boy Scout Boulevard, Suite 1000 Tampa, FL 33607

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8/92-10/93	Legal Assistant (Law Clerk) to Judge Howard Holtzmann Iran-U.S. Claims Tribunal Parkweg 13 The Hague, The Netherlands
7/91-6/92	Law Clerk to Chief Justice William H. Rehnquist United States Supreme Court 1 First Street, N.E. Washington, D.C. 20543
6/91 & 5/88-8/88	Summer Associate Squire, Sanders & Dempsey 4900 Society Center 127 Public Square Cleveland, OH 24414
6/90-6/91	Law Clerk to The Honorable Louis H. Pollak United States District Court, Eastern District of Pennsylvania 601 Market Street Philadelphia, PA 19107
6/89-8/89	Summer Associate Davis, Polk & Wardwell 1300 Eye Street, N.W. Washington, D.C. 20005
6/89	Summer Associate Jones, Day, Reavis & Pogue North Pointe Building 901 Lakeside Avenue Cleveland, OH 44114
5/88-8/88	Summer Associate Squire, Sanders & Dempsey 4900 Society Center 127 Public Square Cleveland, OH 44114
6/86-9/86 4/82-3/85	Employee – throughout the dates noted I held a variety of paid positions at Michigan State University, including student government chief executive (paid position), conference planning administrator for an academic

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conference, summer orientation advisor and budget analyst in the University's Office of Planning & Budget

Michigan State University
E. Lansing, MI 48824

6/86-9/86 Campaign Staff Member
Committee to Re-elect Bill Sederburg
(No fixed address)

4/85-9/85 Budget Analyst/Contract Employee (technically self-employed on contract)
Senate Fiscal Agency
State of Michigan State Senate
201 N. Washington Square, Suite 800
Lansing, MI 48909

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

No military service.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Virginia Law School:
Editor-in-Chief, *Virginia Law Review*, 1989-90
Margaret Hyde Award (law school's leading commencement award)
Order of the Coif
Hardy Cross Dillard Scholarship (three year full-expense academic scholarship)
Book Award – highest first year grade in Torts

Oxford University
Rhodes Scholar
Balliol College Award for Excellence in Philosophy, Politics, and Economics

Michigan State University
Distinguished Freshman Scholarship, 4 year academic full-tuition scholarship
Honors College Member and Graduate
Phi Beta Kappa
Mortar Board

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10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Federal Judicial Conference Advisory Committee on the Federal Rules of Evidence, Department of Justice ex oficio member, Spring 2006-present
Florida Bar Association, 1994-present
Maryland State Bar Association, 2000-present
Federal Bar Association, 1997 (approx.)-present
Board of Governors, Maryland Chapter, 9/02-11/03; 1/06-present
Board of Directors, Tampa Bay Chapter, 1998-99
Criminal Co-Chair, 1998-99
National Association of Assistant United States Attorneys, 1999 (approx.)-11/03 (approx.)
American Inns of Court, 1994-99 (approx.)
Hillsborough County Bar Association, 1994-99 (approx.)
American Bar Association, 1994-99 (approx.)
ABA Litigation Section, Special Publications Committee, 1995-97 (approx.)

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Florida, admitted 5/31/94, currently admitted
Maryland, admitted 7/3/00, currently admitted
No lapses in any state bar admissions.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

State Courts
Florida, admitted 5/31/94, currently admitted
Maryland, admitted 7/3/00, currently admitted

Federal Courts
United States District Court, District of Maryland, admitted 9/20/99, currently admitted
United States Court of Appeals for the Fourth Circuit, admitted 9/22/99, currently admitted
United States District Court, Northern District of Florida, admitted 7/19/96, currently admitted

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United States District Court, Southern District of Florida, admitted 7/19/96, currently admitted
United States District Court, Middle District of Florida, admitted 7/15/94, currently admitted

United States Court of Appeals for the Eleventh Circuit, admitted 11/6/94-4/20/2000, not currently admitted (voluntarily allowed to lapse after moving from Florida)

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Federalist Society, 2000-01 (approx.)
Federalist Society Criminal Law and Procedure Practice Group Executive Committee, 9/2001-11/03 (note: although I was not an active paying member of the Federalist Society at the time, I served on this Committee)
West Montgomery County Citizens Association, 9/2000-9/2001; Board of Directors
Hyde Park Preservation, Inc., 9/96-5/99; Board of Directors
Bethesda Country Club, 5/2007-present

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Learning Life's Lessons, 58 Stanford L. Rev. 1691 (April 2006).

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Remembering Chief Justice Rehnquist, Saint Louis Lawyer Magazine (November 2, 2005).

I was the Editor-in-Chief of the *Virginia Law Review* for 1989-90. We published approximately 1600 pages of legal scholarship during that time, over which I had final editorial authority, but was not primary author.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I am attaching a recent proposal for a change to the Federal Rules of Evidence produced by the Federal Judicial Committee's Advisory Committee on the Federal Rules of Evidence. I am a member of that Committee.

I have also attached a transcript of one public comment session I attended as a committee member in January 2007.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have testified before Congress on four occasions on behalf of the Department of Justice. For three of these I am attaching both my prepared statement and a copy of the hearing transcript. Those hearings were:

1. Senate Committee on the Judiciary
"Illegal Insider Trading: How Widespread Is the Problem and Is There Adequate Criminal Enforcement?"
September 26, 2006

2. Senate Committee on the Judiciary
"Examining Enforcement of Criminal Insider Trading and Hedge Fund Activity"
December 5, 2006

3. Senate Committee on the Judiciary / Subcommittee on Terrorism, Technology and Homeland Security
"Identity Theft"
March 21, 2007

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For one hearing, I have not been able to secure a transcript so am attaching only my written statement. That hearing was:

4. House Committee on Oversight and Government Reform
"Allegations of Waste, Fraud and Abuse in Pharmaceutical Pricing: Financial Impacts on Federal Health Programs and the Federal Taxpayer"
February 9, 2007

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I do not have a comprehensive list of all public speeches I have delivered and have not consistently retained either speech text or outlines/notes since, generally, my public remarks have been on interactive panels for which I did not prepare advance text. Through a review of calendars and similar sources I have identified the following as those I can recall participating in. For those with an (*) I have included speech materials.

General

*1. In Memoriam, Proceedings of the Supreme Court Bar, June 2006. I acted as Meeting Chairman for a memorial event of the Supreme Court in which both speeches were given and a formal memorial resolution was adopted regarding Chief Justice Rehnquist. I have attached a complete copy of the proceedings, which the Supreme Court formally documents, showing my speaking role and the published proceedings.

Acting Assistant Attorney General, ENRD

* 1. Conference of Western Attorneys General, Anaheim, CA
July 23, 2007

* 2. Environmental Enforcement Section, Columbia, SC
June 7, 2007

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I have also attached press releases issued from the Department of Justice containing quotes from me as Acting Assistant Attorney General.

Associate Deputy Attorney General

1. Panel discussion on issues related to United States v. Booker. The panel generally discussed district court sentencing authority and practices in the regime of advisory sentencing guidelines created by U.S. v. Booker. Presented at the Federal Sentencing Guidelines Seminar, sponsored by the United States Sentencing Commission, Salt Lake City, UT. May 24, 2007.

2. Panel discussion on issues related to attorney-client privilege, corporate charging and prosecution, and "The McNulty Memo". Presented at a meeting of Lawyers for Civil Justice, Washington, D.C., May 8, 2007.

3. Panel discussion on issues related to the attorney-client privilege, corporate charging and prosecution, and "The McNulty Memo". Presented at a meeting of the American College of Trial Lawyers, Palm Springs, CA, March 8, 2007.

4. Remarks on the genesis and work of The President's Identify Theft Task Force at a conference jointly sponsored by Deloitte Consulting, LLP, and the American Banker's Association, Washington, D.C., November 30, 2006.

5. Panel discussion on issues related to the United States Sentencing Guidelines, the effects of United States v. Booker and possible legislative responses to the Booker decision. Presented at the Washington Legal Foundation, Washington, D.C., October 19, 2006.

6. Panel discussion on issues related to the attorney-client privilege, corporate charging and prosecution, and "The Thompson Memo". Presented at a New York City Bar Association CLE training, New York, NY, October 16, 2006.

7. Remarks on the genesis and work of The President's Identify Theft Task Force. Presented at a conference sponsored by the National Credit Union Administration, Norfolk, VA, October 3, 2006.

* 8. Speech on issues related to the prosecution of public corruption. Presented to a meeting of Central American Attorneys General, at

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the invitation of the Panamanian Attorney General. Panama City, Panama, August 25, 2006.

* 9. Panel discussion on issues related to the attorney-client privilege, corporate charging and prosecution, and "The Thompson Memo". Presented at the Heritage Foundation, Washington, D.C., August 16, 2006.

10. Panel presentation on issues related to the United States Sentencing Guidelines, the effects of United States v. Booker and possible legislative responses to the Booker decision. Presented at a meeting of the Sentencing Institute, a conference organized by the Federal Judicial Center. Washington, D.C., July 25, 2007.

11. Speech on issues related to the attorney client privilege, corporate charging and prosecution, and "The Thompson Memo". Presented at a conference on corporate compliance and investigations having multiple sponsors. Washington, D.C., June 8, 2007.

* 12. Speech before a conference on corruption and corporate fraud enforcement describing U.S. prosecution activities related to corporations. Conference sponsored by the Independent Commission Against Corruption (ICAC), a Hong Kong law enforcement authority. Hong Kong, May 11, 2006.

13. On May 2, 2006, I participated in a panel on mandatory minimums and the sentencing guidelines. My calendar record indicates it was before the Jewish Reform Group. Washington, D.C.

14. Panel discussion on issues related to United States v. Booker. The panel generally discussed district court sentencing authority and practices in the regime of advisory sentencing guidelines created by U.S. v. Booker. Presented at the Federal Sentencing Guidelines Seminar, sponsored by the United States Sentencing Commission, Miami, FL. June 1, 2006.

15. I have also participated as an instructor at an internal DOJ seminar providing training for prosecutors at the National Advocacy Center in Columbia, South Carolina. The training occurred March 20-21, 2006, and related to sentencing and Department policy in the aftermath of United States v. Booker.

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United States Attorney – Southern District of Illinois

* 1. Panel presentation on issues related to United States v. Booker. The panel generally discussed district court sentencing authority and practices in the regime of advisory sentencing guidelines created by U.S. v. Booker. Presented at a conference of the Hispanic National Bar Association, Washington, D.C., October 18, 2005.

* 2. Speech on issues related to United States v. Booker presented at the Southern Illinois University School of Law at the request of the SIU Law School chapter of the Federalist Society. Carbondale, Illinois, September 15, 2005.

* 3. Welcoming remarks at a law enforcement training session on School Shootings and Hostage Takings, sponsored by the United States Attorney's Office for the Southern District of Illinois (and others), Fairview Heights, Illinois, April 12, 2005.

* 4. Welcoming remarks at that Southern Illinois Crime Summit, sponsored by the United States Attorneys Office for the Southern District of Illinois (and others), Mt. Vernon, Illinois, date uncertain but roughly in the spring/summer of 2005.

* 5. Remarks on the work of the Department of Justice and the United States Attorney's Office to a conference of newly elected Illinois State's Attorneys, Springfield, Illinois, November 19, 2004.

* 6. Welcoming remarks at that Southern Illinois Crime Summit, sponsored by the United States Attorneys Office for the Southern District of Illinois (and others), Mt. Vernon, Illinois, February 2004.

* 7. During my time as United States Attorney, I gave speeches on a number of occasions to local community organizations such as the Rotary Club and the Kiwanis. In these speeches I usually drew from a standard text that had multiple parts, choosing parts according to the length of the speech and any interest expressed by the organization about particular topics to cover. I have attached the notes/text on which I would draw and notes that indicate broadly which portions of the text I used. The dates of these speeches were as follows:

Fairview Heights, Illinois, Kiwanis Club – July 8, 2004
Belleville, Illinois, Rotary Club – September 1, 2004

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O'Fallon, Illinois, Rotary Club – October 2004
Swansea, Illinois, Rotary Club – March 2005

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

While Associate Deputy Attorney General I participated in a number of interviews with reporters in order to provide background information related to a matter on which they were reporting. I did not keep any record of such briefings and, with one exception, am not aware of reporting that resulted in information attributable to me. The exception relates to a set of interviews I did with ABC and CNN related to a website called "WHOSARAT." Transcripts of the stories that ran, including quotes from the interviews I provided, are included in my questionnaire package. The interviews ran on May 22 and 25, 2007.

As United States Attorney, I gave a number of press conferences to announce indictments related to various matters or to announce general enforcement actions such as enforcement action directed against fugitives (Operation Falcon) or firearms violators (Project Safe Neighborhood).

I am attaching copies of my remarks used for these events. They relate to the following matters:

1. U.S. v. Porter, et al., September 21, 2005
2. Operation Falcon Fugitive Roundup, April 14, 2005
3. U.S. v. Brown, et al., March 29, 2005
4. U.S. v. Powell, et al., March 23, 2005.
5. U.S. v. Matthews, January 21, 2005
6. Operation Roaming Charge, October 5, 2004
7. U.S. v. Danton, et al., April 22, 2004
8. Project Safe Neighborhoods, December 3, 2003

I have also attached press releases issued from the United States Attorneys Office containing quotes from me as United States Attorney.

14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

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None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was a campaign staff member in the summer of 1986 in a Michigan state senate race. I was employed by the William Sederburg campaign. Senator Sederburg was then the incumbent state senator representing the E. Lansing/Lansing, Michigan, area. I worked approximately 20 hours per week doing door-to-door canvassing, installing campaign signs, reviewing voter data, and performing similar campaign tasks.

15. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Yes. I served as a law clerk for three different judges.

6/90-6/91	The Honorable Louis H. Pollak United States District Court, Eastern District of Pennsylvania Philadelphia, PA
7/91-6/92	Chief Justice William H. Rehnquist United States Supreme Court Washington, D.C.
8/92-10/93	Judge Howard Holtzmann Iran-U.S. Claims Tribunal The Hague, The Netherlands

ii. whether you practiced alone, and if so, the addresses and dates;

I did not practice alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

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11/93-4/97	Associate Carlton, Fields Law Firm Corporate Center Three 4221 West Boy Scout Boulevard, Suite 1000 Tampa, FL 33607
4/97-8/99	Assistant United States Attorney United States Attorney's Office Middle District of Florida 400 North Tampa Street Suite 3200 Tampa, FL 33602
8/99-11/03	Assistant United States Attorney (9/01-10/03 Branch Chief/Deputy Criminal Chief) United States Attorney's Office District of Maryland United States Courthouse, Suite 400 6500 Cherrywood Lane Greenbelt, MD 20770
11/03-11/05	United States Attorney United States Attorney's Office Southern District of Illinois Nine Executive Drive Fairview Heights, IL 62208
11/05-5/07	Associate Deputy Attorney General Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530
5/07-Present	Acting Assistant Attorney General Environment and Natural Resources Division Department of Justice, Room 2141 950 Pennsylvania Avenue, NW Washington, DC 20530

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

For my first three years after graduating from law school (1990-1993), I served as a judicial law clerk. Initially, this was for a United States District Court Judge. In that connection, I reviewed various civil and

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criminal pleadings, prepared draft memoranda and orders, participated in settlement, status, and scheduling conferences, and assisted in scheduling and managing the court's docket. Next, while clerking for the Chief Justice, I reviewed petitions for certiorari and prepared memoranda that circulated to multiple Justices evaluating the merits of the certiorari petitions, reviewed merits briefs and oral argument in cases for which certiorari was granted, and prepared draft opinions – both majorities and dissents – for the Chief Justice's review and revision. I also reviewed petitions for emergency relief -- such as motions for stays of execution -- and prepared recommendations regarding their disposition for circulation to the Chief Justice and/or the full Court. Finally, as a law clerk at the Iran-U.S. Claims Tribunal, I assisted an American judge in conducting the Tribunal's work in adjudicating claims between the governments of the United States and Iran, and between U.S. nationals and the Iranian government. Those claims stemmed from the rupture in U.S.-Iranian relations associated with the Iranian revolution and 1979 embassy hostage crisis. In this connection, I reviewed claims brought by the national governments against one another and/or claims brought by American nationals against the Iranian government, prepared draft dispositions, and worked with the law clerks to the other judges (American, Iranian and so-called "neutrals") on scheduling and related matters.

While an associate at the Carlton, Fields law firm (1993-1997), I spent approximately 80-90 percent of my time working on matters for Florida Power Corporation, Florida's second largest electric utility. The bulk of that time was spent defending and prosecuting a variety of interrelated contract breach and antitrust claims brought by and against the utility, stemming from a series of multi-million dollar contracts held with electric cogenerators, and executed pursuant to the Public Utility Regulatory Policy Act of 1978 and other federal and state energy statutes. In this connection, I managed extensive document discovery, took and defended scores of depositions, and prepared procedural and dispositive motions. I also represented Florida Power in associated proceedings before Florida's public utility commission related to the validity of the cogeneration contracts and the Commission's approval of various payments to be made in settlement of the disputes. I also provided Florida Power with antitrust compliance advice not specifically related to ongoing litigation. The balance of my time with the firm was largely devoted to working on a variety of smaller matters for a range of clients, including appellate briefing and trial discovery for banking and insurance clients and attorneys engaged in fee disputes. Finally, I was one of several attorneys involved in representing, on a *pro bono* basis, Ronnie Lee Jones, a convicted defendant challenging his death sentence in state court collateral proceedings. I was one of the attorneys who conducted the trial level litigation of his collateral claims.

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While an Assistant United States Attorney (non-supervisory) in Tampa, Florida, and Greenbelt, Maryland (1997-2001), I represented the United States in the investigation, prosecution and appellate litigation of a variety of matters. While in Tampa, I was assigned to the Major Crimes Section, where I handled primarily narcotics offenses, violent crimes, firearms offenses, and various fraud matters such as identity theft, credit card offenses, and immigration violations. I handled a small number of appellate matters but my duties were primarily at the trial level. In Greenbelt, I handled a similar docket, without a particular substantive specialization or group assignment. Unlike Tampa, this included both trial work and the subsequent appellate litigation.

Once promoted to deputy criminal chief and branch chief of the Greenbelt office (September 2001-November 2003), my substantive case load was reduced to allow me to supervise the approximately 15 attorneys in the Greenbelt office. I reviewed all indictments, plea agreements, and appellate briefs for form and substantive content. I assigned cases within the office and supervised their development. On matters relating to Greenbelt cases, I handled liaison duties with the three District Court and three Magistrate Court judges in the Courthouse, with other components of the Department of Justice (such as units within the Criminal Division, the Executive Office of United States Attorney, and other United States Attorneys offices) and with various outside law enforcement agencies and state prosecuting offices. I also directly supervised a variety of non-attorney personnel including a Victim-Witness Coordinator, Office Manager, Supervisory Secretary, and a paralegal.

As United States Attorney for the Southern District of Illinois (Nov. 2003-Nov. 2005) I served as chief federal law enforcement officer for the District and oversaw an office of approximately seventy staff, including approximately thirty-five attorneys. I oversaw both criminal and civil matters with the civil matters being both offensive and defensive. I set broad office enforcement priorities, oversaw matters related to budget and personnel, served as principal liaison to the District Court, and led federal agency efforts in working with state and local counterparts. In addition, beginning in January 2005, I served on the Attorney General's Advisory Committee of United States Attorneys ("AGAC") and as vice-chair of the AGAC's Sentencing Subcommittee.

As Associate Deputy Attorney General (Nov. 2005-May 2007), I served as a senior advisor to the Deputy Attorney General both in formulating Department policy and in exercising operational oversight over a range of Justice Department programs and initiatives, focusing especially on matters related to litigation. Among my specific duties were coordinating

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work of the President's Corporate Fraud Task Force, serving as Executive Director to the President's Identity Theft Task Force, overseeing initiatives and work related to health care fraud enforcement, and reviewing legislative and other policy proposals related to litigation. This included serving as the Department's *ex oficio* representative on the Judicial Conference's Advisory Committee on the Federal Rules of Evidence.

As Acting Assistant Attorney General, Environment and Natural Resources Division (May 2007-Present), I oversee the work of the Division's approximately 420 lawyers and associated support staff. The work includes both criminal and civil cases, with civil including both offensive and defensive matters.

ii. your typical clients and the areas, if any, in which you have specialized

While an associate at the Carlton, Fields law firm (1993-1997), I was in the litigation group and worked exclusively on litigation and litigation-related matters. I spent approximately 80-90 percent of my time working on matters for Florida Power Corporation, Florida's second largest electric utility. As a result, I was essentially a civil litigator who became also a utility law specialist, with some additional focus on antitrust matters. The balance of my time with the firm was largely devoted to working on a variety of smaller matters for a range of clients, including appellate briefing and trial discovery for banking and insurance clients and attorneys engaged in fee disputes. Finally, I was one of several attorneys involved in representing, on a *pro bono* basis, Ronnie Lee Jones, a convicted defendant challenging his death sentence in state court collateral proceedings. I was one of the attorneys who conducted the trial level litigation of his collateral claims.

While an Assistant United States Attorney (non-supervisory) in Tampa, Florida, and Greenbelt, Maryland (1997-2001), I represented the United States in the investigation, prosecution and appellate litigation of a variety of criminal matters. While in Tampa, I was assigned to the Major Crimes Section, where I handled primarily narcotics offenses, violent crimes, firearms offenses, and various fraud matters such as identity theft, credit card offenses, and immigration violations. In Greenbelt, I handled a similar criminal docket, without a particular substantive specialization or group assignment. Unlike Tampa, this included both trial work and handling any subsequent appellate litigation.

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In my positions as United States Attorney, Associate Deputy Attorney General, and Acting Assistant Attorney General I have supervised a range of matters involving the interests of the United States and specific client agencies. These have included both criminal and civil matters.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As a judicial law clerk (1990-93) I did not appear in court at all, although I frequently observed the judicial proceedings conducted by the Court (e.g. trials, oral argument).

While employed in private practice (1993-97) I appeared in court occasionally, approximately one dozen times.

While a non-supervisory Assistant United States Attorney I appeared in court frequently, on a weekly, and often daily, basis.

While a supervisory Assistant United States Attorney, I appeared in court frequently, although less frequently than while a non-supervisory AUSA.

As United States Attorney I was frequently involved in litigation but did not appear in court.

As Associate Deputy Attorney General, I was sometimes involved in reviewing litigation strategy but did not appear in court.

As Acting Assistant Attorney General I frequently review litigation matters but I have not personally appeared in court.

i. Indicate the percentage of your practice in:
   1. federal courts;

      Approximately 98 percent of my appearances have been in federal court. While in private practice (1993-97), my appearances were approximately half federal and half state courts or state regulatory bodies. Since becoming an AUSA (1997-present), my personal appearances have been exclusively federal. A very small percentage, less than 1 percent, of those matters I have supervised as United States Attorney or Acting Assistant Attorney General have been state court proceedings.

   2. state courts of record;

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Approximately 1 percent of my personal appearances have been in state courts of record. While in private practice (1993-97), I appeared approximately 3-4 times in state court. Since becoming an AUSA (1997-present), I have had no state court appearances.

3. other courts.

Approximately 1 percent of my appearances have been in other courts (Florida state public utility commission). While in private practice (1993-97), I appeared 2-3 times before the Florida public utility commission.

ii. Indicate the percentage of your practice in:
1. civil proceedings;

While in private practice (1993-97), my practice was 99 percent civil. The only exception was one matter in which I represented a convicted state court defendant in his post-trial collateral attack on his conviction. While an AUSA (1997-November 2003), my practice was 1 percent civil. As United States Attorney my practice was roughly 20 percent civil. As Associate Deputy Attorney General my duties were 10 percent civil. As Acting Assistant Attorney General my duties are 90 percent civil.

2. criminal proceedings.

While in private practice (1993-97), my litigation was 1 percent criminal. While an AUSA (1997-November 2003), my litigation was 99 percent criminal. As United States Attorney my practice was 80 percent criminal. As Associate Deputy Attorney General my duties were 90 percent criminal. As Acting Assistant Attorney General my duties are 10 percent criminal.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 17 cases to verdict. The trial matters have involved a mix of both sole and co-counsel responsibilities. I was sole counsel in 10 of the 17 and the balance involved co-counsel, e.g. another AUSA who participated in the trial.

i. What percentage of these trials were:
1. jury;

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Approximately 80 percent of my trials were tried to a jury.

2. non-jury.

Approximately 20 percent of my trials were non-jury.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In each of the following matters I represented the United States and was either sole or co-counsel in trying the matter to a jury:

United States v. Everett Black
Case No. 97-CR-432-ALL (no reported opinion)
Two day jury trial on charges of cocaine possession with intent to distribute. The defendant was convicted and received a life sentence. I oversaw the investigation, conducted the presentation to the grand jury, prepared the charging document, handled all pretrial matters and motions, oversaw discovery, conducted witness preparation, and presented witnesses and/or cross-examined witnesses at the trial. I presented opening and closing arguments. I also represented the United States at sentencing. I did not represent the United States on appeal. Affirmed on appeal.
Sole counsel
February 1998
United States District Court for Middle District of Florida, Judge Richard Lazzara
Defense counsel, Craig Alldredge, Pinellas County Public Defender's Office, 14250 49th St. N., Clearwater, FL, 33762-2800, (724) 464-6540

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United States v. Kobres
Case No. 97-00470-CR-470-ALL (no reported opinion)
Three day jury trial of individual operating an unlicensed "micro-broadcast" radio station. The defendant was convicted. This was the first criminal prosecution of an unlicensed micro-broadcaster anywhere in the country. Pretrial litigation included defending the FCC's constitutional authority to regulate the airwaves, even as to low power "intrastate" broadcasting, and defending the validity of the FCC's rule-making process for granting licenses. I oversaw the investigation, conducted the presentation to the grand jury, prepared the charging document, handled all pretrial matters and motions, oversaw discovery, conducted witness preparation, and presented witnesses and/or cross-examined witnesses at the trial. I presented opening and closing arguments. I also represented the United States at sentencing. I did not represent the United States on appeal. Affirmed on appeal.
February 1998
United States District Court for Middle District of Florida, Judge Henry Adams
Sole counsel
Defense counsel, Lowell Becraft, Jr., 209 Lincoln St., Huntsville, AL 35801, (205) 533-2535

United States v. Bobby Thomas
Case No. 97-335-ALL (no reported opinion)
One week narcotics jury trial of sole remaining defendant, Bobby Thomas, in a matter in which Thomas and several other defendants were charged with operating a cocaine importation ring that brought cocaine from Jamaica to the United States, using women who would swallow "balloons" of cocaine to be "passed" after they made entry into the United States. Five defendants, including Thomas, convicted in total. I oversaw the investigation, conducted the presentation to the grand jury, prepared the charging document, handled all pretrial matters and motions, oversaw discovery, conducted witness preparation, and presented witnesses and/or cross-examined witnesses at the trial. I presented opening and closing arguments. I also represented the United States at sentencing. I did not represent the United States on appeal. Affirmed on appeal.
July 1998
United States District Court for Middle District of Florida, Senior Judge William Castagna
Sole counsel
Defense counsel, Carl Hayes, 308 East Dr. Martin Luther King Blvd., Tampa, FL 33603-3866, (813) 237-2392

United States v. Regueira, et al.
Case No. 98-CR-33-ALL (no reported opinion)
Narcotics importation matter involving cocaine and heroin being imported from the Caribbean. Eleven defendants were indicted in a single indictment on conspiracy and substantive charges. Approximately 2 1/2 week jury trial with four trial defendants (one of whom pled guilty mid-trial), all of whom were

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convicted. The investigation produced about one dozen total convictions via either trial or plea agreement. The lead defendant received a sentence of 200 months and two others received sentences of more than ten years. I oversaw the investigation, conducted the presentation to the grand jury, prepared the charging document, handled all pretrial matters and motions, oversaw discovery, conducted witness preparation, and presented witnesses and/or cross-examined witnesses at the trial. I presented opening and closing arguments. I also represented the United States at sentencing. I did not represent the United States on appeal. Affirmed on appeal.
September 1998
United States District Court for Middle District of Florida, Judge Henry Adams
Sole counsel
Principal defense counsel, Greg Denaro, 2701 South Bayshore Drive, Suite 605, Coconut Grove, FL, 33133, (305) 858-3221

United States v. Courtney Williams
Case No. 99--CR-79-ALL (no reported opinion)
One week jury trial of armed bank robbery. The defendant was convicted and received a sentence of 156 months. I oversaw the investigation, conducted the presentation to the grand jury, prepared the charging document, handled all pretrial matters and motions, oversaw discovery, conducted witness preparation, and presented witnesses and/or cross-examined witnesses at the trial. I presented opening and closing arguments. I also represented the United States at sentencing. I did not represent the United States on appeal. Affirmed on appeal.
May 1999
United States District Court for Middle District of Florida, Senior Judge William Castagna
Sole counsel
Defense counsel, Sharon Lever, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. (202) 514-9281. (Note that Ms. Lever was relieved as counsel by her client mid-way into trial and the defendant proceeded *pro se* for the balance of the trial, with Ms. Lever as stand-by counsel.)

United States v. Lightfoot
Unpublished opinion affirming the conviction at 2001WL 301126 (4th Cir. 2001).
One week armed bank robbery jury trial of defendant with multiple prior bank robbery convictions. Defendant sentenced to mandatory life imprisonment as a "three strikes" offender. I oversaw the investigation, conducted the presentation to the grand jury, prepared the charging document, handled all pretrial matters and motions, oversaw discovery, conducted witness preparation, and presented witnesses and/or cross-examined witnesses at the trial. I presented opening and closing arguments. I also represented the United States at sentencing. I also prepared the brief for the Fourth Circuit appeal of this matter. Affirmed on appeal.
January 2000

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United States District Court for District of Maryland, Judge Peter Messitte
Sole counsel
Defense counsel, Paul DeWolfe, Office of the Montgomery County Public Defender, 27 Courthouse Square, Rockville, MD, 20850, (301) 279-1660.

United States v. Hopkins
Conviction affirmed in published opinion, 310 F.3d 145 (4th Cir. 2002).
One week jury trial of armed assault/shoot-out incident in which defendant, wanted on murder charges, led federal law enforcement officers on a twenty-mile high speed chase around the Washington, D.C. metropolitan area and which chase culminated in the defendant crashing into an occupied school bus. The defendant was convicted on charges of assaulting federal officers, firearms charges, and narcotics charges. He received a life sentence. I oversaw the investigation, conducted the presentation to the grand jury, prepared the charging document, handled all pretrial matters and motions, oversaw discovery, conducted witness preparation, and presented witnesses and/or cross-examined witnesses at the trial. I presented either opening or closing arguments. I also represented the United States at sentencing. I also prepared the brief for the Fourth Circuit appeal of this matter, and conducted the oral argument before the Fourth Circuit. Conviction affirmed on appeal.
April 2001
United States District Court for District of Maryland, Judge Alexander Williams
Co-counsel AUSA James Trusty, 6500 Cherrywood Lane, Suite 400, Greenbelt, MD, 20770, (301) 344-4338
Defense counsel, Timothy Sullivan, Brennan, Sullivan & McKenna, 63 Ivy Lane, Suite 700, Greenbelt, MD 20770, (301) 474-4400.

United States v. Stone, et al.
Unpublished opinion affirming the conviction at 2004 WL 99036 (4th Cir. 2004).
Three week trial of a General Services Administration federal employee and an accountant (a number of contractors pled before trial) charged with contract fraud in connection with the award of GSA sole source "micro-contracts" for electrical services work. Both defendants were convicted. My role was as second chair counsel. I participated in the investigation and preparation of the charging document, prepared witnesses, and conducted witness examination. I assisted in preparation of the Fourth Circuit brief. Conviction affirmed on appeal.
November 2001
United States District Court for District of Maryland, Judge Andre Davis
Co-counsel AUSA David Salem, 6500 Cherrywood Lane, Suite 400, Greenbelt, MD, 20770, (301) 344-4237)
Principal defense counsel, Robert Bonsib, Marcus & Bonsib, 6411 Ivy Lane, Suite 116, Greenbelt, MD, 20770, (301) 441-3000.

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United States v. Johnson
Conviction affirmed in published opinion, 400 F.3d 187 (4th Cir. 2005).
One week trial of kidnaping/attempted murder of a kidnap victim who was sexually assaulted. My role was as second chair trial counsel. I prepared witnesses, conducted witness examination, and offered closing argument.
Conviction affirmed on appeal.
May 2003
United States District Court for District of Maryland, Judge Peter Messitte
Co-counsel, AUSA Deborah Johnston, 6500 Cherrywood Lane, Suite 400, Greenbelt, MD, 20770, (301) 344-4032
Defense counsel, Timothy Sullivan, Brennan, Sullivan & McKenna, 63 Ivy Lane, Suite 700, Greenbelt, MD 20770, (301) 474-4400.

In the below matter, I represented the defendant/petitioner, Ronnie Lee Jones, in his Florida state court collateral attack of his death penalty conviction:

Ronnie Lee Jones v. State of Florida
Case reported on appeal at Jones v. Florida, 740 So. 2d 520 (Fla. 1999)
I was the primary draftsman in preparing a petition for collateral relief that was approximately 100 pages and which presented various claims of constitutional violation at Mr. Jones' trial and in the subsequent failure to timely entertain his post-conviction petition. Select claims were set for an evidentiary hearing that lasted slightly less than a week before a Florida state trial court in February 1997. I put on various witnesses for the petitioner and cross-examined various witnesses for the State. Relief was subsequently denied by the trial court, roughly contemporaneous with my leaving to join the U.S. Attorney's Office in Tampa. On appeal, I was therefore not eligible to participate in the representation. On appeal, the Florida Supreme Court ultimately reversed, granting relief on the claims I had helped litigate below. 1994-1997
Dade County Circuit Court, Judge Korvick, 310 Dade County Courthouse, 73 W. Flagler Street, Miami, FL, 33130 (305) 349-7086
Co-counsel, Chris Coutroulis/Bob Ciotti, Carlton, Fields Law Firm, Corporate Center Three, 4221 West Boy Scout Boulevard, Suite 1000, Tampa, FL 33607 (813) 229-4301/4305.
Opposing counsel was the Dade County State Attorney's Office, Abraham Laeser, 2d Floor, S245, 1350 NW 12th Avenue, Miami, FL, 33136-2102, (305) 547-0325.

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

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As a law clerk at both the trial and Supreme Court level, and then to an American judge on an international tribunal, I gained substantial experience in managing a trial court docket, reviewing and analyzing competing legal positions, conducting original legal research, and preparing written work analyzing legal issues. I have carried this experience forward in all subsequent work.

While an associate at the Carlton Fields law firm, I participated in a far-ranging set of interrelated contract disputes with document discovery involving thousands of pages, extensive depositions, and substantial motions practice. The matters involved complicated questions of state-federal jurisdiction as applied to a heavily regulated industry. I was the senior associate assigned to the matter and personally conducted or defended scores of fact and expert depositions. The matters resulted in proceedings before the federal district court, a state trial court, and the state's public utility commission. I argued motions and prepared submissions for each tribunal. Ultimately, the matter settled after approximately eighteen months of litigation after a multi-day mediation in which I was one of two outside counsel participating for the client. Moreover, because of the expertise I gained in the client's operations, I then participated in a various counseling/corporate compliance sessions related to the antitrust laws. I also participated throughout that period in variety of other smaller matters, and was especially active in the firm's appellate litigation, crafting briefs in several matters. Finally, I was deeply involved in the firm's pro bono representation of a death row inmate in the equivalent of a state habeas proceeding. I was asked by my firm to serve as counsel in the matter because my recent Supreme Court clerkship had made me familiar with death penalty jurisprudence. I oversaw the redrafting of a petition for relief filed by prior counsel, which redrafting involved multiple attorneys at the firm as well as myself. I was one of three firm attorneys who then participated in presenting trial level evidence in support of the claims.

As a line Assistant United States Attorney for approximately four and one-half years I spent every day focused on matters of criminal investigation, charging, trial and appeal, related to a broad range of crimes. I have tried cases as short as two days and as long as three weeks. In this connection I have worked closely with investigating agents from federal, state and local jurisdictions in developing investigative strategy, participated in the preparation of search warrants, grand jury subpoenas and other legal process, interviewed witnesses, put on witnesses on both direct and cross-examination, conducted opening and closing arguments, defended appeals and negotiated plea resolutions.

In my final years working in the United States Attorney offices, first as both a supervising Assistant United States Attorney in Maryland and then as United States Attorney in the Southern District of Illinois, my legal activities were more broadly focused on directing and reviewing the work of colleagues. As a supervising assistant, I was responsible for reviewing and approving for the fifteen attorneys I supervised all indictments, plea agreements, and appellate briefs. This involved me in the full range of offenses pursued by the office, including white collar, violent crime, narcotics, immigration, and a host of others. I would also coordinate cases with local state prosecuting offices to insure that the appropriate jurisdiction handled matters brought to

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the attention of multiple offices and would address staffing and strategy matters with the various investigative agencies.

As United States Attorney I oversaw the Office's legal efforts, as well as led the collective federal law enforcement effort among the multiple federal agencies present in the District. As a result, I had frequent contact with various federal agency heads to discuss staffing, priority investigative areas, and coordination with state and local counterparts, as well as to discuss specific investigative matters. In this connection I led a quarterly meeting of the federal law enforcement agency heads, as well as a quarterly meeting of our Law Enforcement Coordinating Committee ("LECC"), consisting of approximately ten state and local law enforcement agency heads such as county sheriff and municipal police chiefs in order to hear any concerns that they had related to federal law enforcement efforts and to share with them federal law enforcement developments. I also jointly chaired with my counterpart United States Attorney for the Eastern District of Missouri the United States Attorneys Hate Crimes Task Force. This Task Force included federal and local law enforcement officials and community leaders from various community organizations who met periodically to discuss any incidents raising hate crime concerns and to discuss community outreach efforts that could be made to prevent such incidents. I also convened a periodic meeting with members of the local defense bar to discuss their views and concerns about office practices.

During my tenure, the office pursued an aggressive methamphetamine enforcement program and made important in-roads related to local public corruption. In particular, my office led the way in the establishment of a multi-agency public corruption task force including the FBI, the Postal Inspection Service and the Illinois State Police. That Task Force's work produced a number of convictions, including, for example, conviction of the police chief for one of the jurisdiction's largest local forces, the East St. Louis Police Department. Finally, as member of the Attorney General's Advisory Committee I was involved in providing advice on a range of issues affecting United States Attorney's office, including matters related to prosecution policy and procedures, personnel practices, and budget. As vice-chair of the Sentencing Subcommittee, I was particularly involved in providing a field perspective on the effects resulting from the Supreme Court's decision in United States v. Booker and in developing Department policy in response to that decision.

While Associate Deputy Attorney General my legal activities focused much more on matters of legal policy and justice administration than on individual cases or investigations. As the Department's *ex oficio* representative to the Federal Judicial Conference's Advisory Committee on the Rule of Evidence, I participated in meetings with judges, private practitioners, and academics in evaluating proposals for changes to the federal rules of evidence. In addition, for about a year, I acted as Executive Director for the President's Identity Theft Task Force. That Task Force consisted of 17 federal agencies and produced a public report of nearly 200 pages recommending a variety of legal, administrative and policy changes that should be undertaken by federal agencies, other public entities and private for-profit and non-profit entities to better limit the incidence of identity theft and to address its impact when such theft does occur.

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Similarly, I coordinated the meetings and activities of the Corporate Fraud Task Force, chaired by the Deputy Attorney General, in that Task Force's efforts to continue to address fraud related to our financial markets and corporate entities.

Finally, as Acting Assistant Attorney General for the Environment and Natural Resources Division, I review and have final approval authority related to both the initiation of cases brought by Division lawyers and their ultimate disposition. Thus, I routinely review proposed complaints and consent decrees or other settlements arising under the Clean Air Act, Clean Water Act, and a number of other environmental statutes. In my time in the position, this has included, for example, major complaints or settlements with municipal sewage authorities in St. Louis, Pittsburgh, and San Diego. It has similarly included resolution of matters involving significant corporate entities, such as utility companies, in which those entities agree to substantial injunctive relief to abate past violations and insure future compliance. Similarly, I have approved a variety of settlements reached under CERCLA, RCRA and other statutes dealing with hazardous and toxic waste production and disposal. My time is primarily spent in reviewing the wide-range of matters handled by the Division, both criminal and civil and, as to civil matters, both suing on behalf of the United States and defending suits brought against the Division's client agencies.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

None.

19. **Deferred Income / Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None. I do have an account with the federal Thrift Savings Plan (TSP).

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items

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exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached disclosure report.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached statement and schedules.

23. **Potential Conflicts of Interest**:

a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will resolve any potential conflicts of interest through consultation with the ethics attorneys in the Department of Justice. I intend to identify areas of concern through vigilance as to any potential conflicts I may have arising from financial or other connections to matters before the Division and through prompt consultation with conflicts experts as to the appropriate action if a conflict develops. Since becoming Acting Assistant Attorney General I have liquidated all individual stocks held by myself, by my spouse, or jointly, in order to limit the potential for financial conflicts arising.

24. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While in private practice in Florida, I (along with others at my law firm) devoted substantial time to representing Ronnie Lee Jones, a death row inmate, in a post-conviction state court proceeding challenging his conviction and sentence. I do not have precise records available, but I would estimate that over a three year period I personally devoted several hundred hours to the matter. Since joining the Department of Justice, I have been more constrained by the Department's rules regarding outside legal activity. However, I have been a participant in the District of Maryland's program in which attorneys visit local high schools to provide lectures/talks to high school students regarding the work we do as prosecutors. This involved a few hours a year. In addition,

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the Office was a regular participant in various holiday efforts to provide gifts and clothing through various "adopt a family" programs in which a disadvantaged family is selected to support with various holiday donations of food, clothing and presents for the children. I was a regular contributor and participant in this program. Finally, of course, a substantial portion of my regular professional practice has involved efforts to vindicate the disadvantaged who have been the victims of crime, securing punishment for the perpetrators and restitution for the victims.

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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	$45,000.00	Notes payable to banks -- secured	0
U.S. Government securities-add schedule	$3,000.00	Notes payable to banks -- unsecured	0
Listed securities-add schedule	$327,500.00	Notes payable to relatives	0
Unlisted securities--add schedule	0	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid income and interest	0
Doubtful	0	Real estate mortgages payable--add schedule	$141,000.00
Real estate owned-add schedule	$520,000.00	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts -- itemize:	0
Autos and other personal property	$15,000.00		
Cash value-life insurance	$24,000.00		
Other assets itemize:			
Money Markets	$105,000.00		
Thrift Savings	$219,000.00	Total liabilities	$141,000.00
		Net Worth	$1,188,000.00
Total Assets	$1,249,000.00	Total liabilities and net worth	$1,249,000.00
CONTINGENT LIABILITIES	0	GENERAL INFORMATION	
As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule)	NO
On leases or contracts	0	Are you defendant in any suits or legal actions?	NO
Legal Claims	0	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	0		
Other special debt	0		

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U.S. Government Securities

Savings Bonds -- $3,000

Listed Securities – Schedule (rounded to nearest hundred)

Non-qualified investments -- general assets

Security	Value	Ownership Status
Tamarack Investment Funds	$21,100	Joint with spouse

Assets held in "Qualified Accounts" such as IRA, Roth IRA, Spousal IRA, College 529 Plan

Security	Value	Ownership Status
Federated Auto Cash Mngmnt Trust	1,100	Personal IRA
Blackrock SmCap Grwth Fnd	2,100	Personal IRA
Franklin SmCap Value Fnd	2,100	Personal IRA
Growth Fund of America	12,200	Personal IRA
Heritage MidCap Stock Fnd	6,400	Personal IRA
Thornburg Value Fnd	12,200	Personal IRA
Europacific Growth Fnd	3,700	Personal IRA
Thornburg Intnl Value Fnd	3,700	Personal IRA
Loomis Sayles Strategic Fnd	4,800	Personal IRA
Templeton Global Bond Fnd	4,800	Personal IRA
Tamarack Invt Funds	2,800	Roth IRA
Allianz NFJ Sml Cap Value Fnd	9,700	Roth IRA
Eaton Vance Special Equity Fnd	8,300	Roth IRA
Capital World Growth Income Fnd	1,900	Roth IRA
Goldman Sachs Strtgc Fnd	2,000	Roth IRA
JP Morgan Intl Equity Fnd	5,900	Roth IRA
Tamarack Invt Funds	3,000	Spousal Roth IRA
Allianz NFJ Sml Cap Value Fnd	9,700	Spousal Roth IRA
Eaton Vance Special Equity Fnd	8,300	Spousal Roth IRA
Capital World Growth Income Fnd	1,900	Spousal Roth IRA
Goldman Sachs Strtgc Fnd	2,000	Spousal Roth IRA
JP Morgan Intl Equity Fnd	5,900	Spousal Roth IRA

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TRowe Price Intl Grwth & Income Fnd	1,400	529 Plan f/b/o child
TRowe Price Intl Stock Fnd	1,500	529 Plan f/b/o child
TRowe Price Mid-Cap Grwth Fnd	1,900	529 Plan f/b/o child
TRowe Price Mid-Cap Value Fnd	1,400	529 Plan f/b/o child
TRowe Price Sml-Cap Stock Fnd	2,500	529 Plan f/b/o child
TRowe Price Spectrum Incm Fnd	4,300	529 Plan f/b/o child
TRowe Price Value Fnd	3,800	529 Plan f/b/o child
TRowe Price Blue Chip Grwth Fnd	5,300	529 Plan f/b/o child
TRowe Price Eqty Index Fnd	11,700	529 Plan f/b/o child
CREF Stock Fnd	62,200	Spousal Retirement
CREF Growth Fnd	31,700	Spousal Retirement
CREF Global Equities Fnd	35,200	Spousal Retirement
CREF Bond Market Fnd	14,900	Spousal Retirement

Qualified investments held through annuity contract

Nationwide NVIT Investor Destination Aggr Fund II	5,000	Inherited Annuity Contract

Non-qualified investments held through annuity contract

Nationwide NVIT Money Mkt	81,400	Inherited Annuity Contract
Fidelity VIP Contrafund Portfolio	10,700	Inherited Annuity Contract
Nationwide NIVT Investor Destination Moderate Fund	5,600	Inherited Annuity Contract

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Schedule – Real Estate Owned

931 Far Oaks Drive Caseyville, IL	520,000	Personal Residence/Joint with Spouse

Schedule – Cash Value Life Insurance

NW Mutual Whole Life Policy	8,900
NW Mutual Whole Life Policy (Spouse)	15,700

Schedule – Real Estate Mortgages Payable on 931 Far Oaks

Chase Bank	141,000	1st Mortgage and Home Equity Line

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U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate	Termination Filer	Termination Date (If Applicable) (Month, Day, Year)
Nov 22, 2005		☒	2006	☐	☐	

	Last Name	First Name and Middle Initial
Reporting Individual's Name	Tenpas	Ronald J.
Position for Which Filing	Title of Position: Associate Deputy Attorney General	Department or Agency (If Applicable): Dept. of Justice
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): 950 Pennsylvania Ave., N.W., Rm 4216 Washington	Telephone No. (Include Area Code): (202) 514-3286
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☐ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Ronald J Tenpas	5/11/07
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
	David M. Rodger	5/30/07
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	[signature]	6-7-07
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

Notations "JMR" by Janice Rodgers based on information from filer.

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

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Reporting Individual's Name	SCHEDULE A	Page Number
Tenpas, Ronald J.		1

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x									
	Doe Jones & Smith, Hometown, State			x																											Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x										x								
	IRA: Heartland 500 Index Fund							x						x											x							
1	J/Tamarack Investment Fund (money market)			x														x				x										
2	J/Bristol Myers Squibb Common		x														x				x											
3	J/Diamond Trust Shares Common (Dow Jones Index Fund)		x											x			x				x											
4	J/Sun Microsystems Common	x															x				x											
5	Boeing Common (IRA)		x														x				x											
6	Chevron Common (IRA)		x														x				x											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name		Page Number
Tenpas, Ronald J.	SCHEDULE A continued (Use only if needed)	2

Assets and Income

Valuation of Assets at close of reporting period

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

BLOCK A	BLOCK B											BLOCK C														
												Type						Amount								
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
7 Cisco Systems Common		X													X				X												
8 Citigroup Common (IRA)			X													X					X										
9 Coca-Cola Common (IRA)			X													X				X											
10 Ford Motor Common (IRA)		X														X				X											
11 General Electric Common (IRA)			X													X				X											
12 Intel Common (IRA)			X													X				X											
13 Microsoft Common (IRA)			X													X				X											
14 Procter & Gamble Common (IRA)			X													X				X											
15 Visteon Common (IRA)		X														X				X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Tenpas, Ronald J.	SCHEDULE A continued (Use only if needed)	Page Number: 3

Assets and Income	Valuation of Assets at close of reporting period													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																		
BLOCK A	BLOCK B													BLOCK C																		
														Type						Amount												
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
16 Unilever Common (IRA)		X														X				X												
17 Columbia International Value Fund (IRA)		X											X								X											
18 J/Allianz NFJ Smi Cap Val Fund (Roth IRAs)			X										X									X										
19 EMC Corp. Common (Roth IRA)	X															X				X												
20 J/Eaton Vance Special Eqty Fnd (Roth IRAs)		X											X							X												
21 GAP Inc. Common (Roth IRA)	X															X				X												
22 MeData Corp. Common (Roth IRA)	X															X				X												
23 J/Motorola Common (Roth IRAs)		X														X				X												
24 J/Axa Enterprises International Growth Fund		X											X							X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Tempas, Ronald J.

SCHEDULE A continued
(Use only if needed)

Page Number: 4

Assets and Income

Valuation of Assets at close of reporting period

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

	BLOCK A	BLOCK B												BLOCK C																
														Type						Amount										
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
25	J/Capital World Growth & Income Fund (Roth IRAs)		X											X								X									
26	J/JP Morgan International Equity Fund (Roth IRAs)		X											X									X								
27	S/Amazon Common (Roth IRA)			X													X					X									
28	S/Time Warner Common (Roth IRA)			X													X					X									
29	TRowePrice International Growth & Income Fund (529 Plan MD)			X										X								X									
30	TRowe Price International Stock Fund (529 Plan MD)			X										X								X									
31	TRowe Price Mid-Cap Growth Fund (529 Plan MD)			X										X								X									
32	TRowe Price Mid-Cap Value Fund (529 Plan MD)			X										X								X									
33	TRowe Price Small-Cap Stock Fund (529			X										X								X									

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Tempas, Ronald J.	SCHEDULE A continued (Use only if needed)	Page Number: 5

Assets and Income

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	BLOCK A	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
34	TRowe Price Spectrum Income Fund (529 Plan MD)		X											X																			
35	TRowe Price Value Fnd (529 Plan MD)			X										X							X												
36	TRowe Price Blu Chip Grwth Fnd (529 Plan MD)		X											X																			
37	TRowe Price Eqty Index Fnd (529 Plan MD)		X											X							X												
38	S/CREF Stock Fund				X									X							X												
39	S/CREF Growth Fund			X										X							X												
40	S/CREF Global Equities Fund			X										X							X												
41	S/CREF [redacted]-Bond Market Fund		X											X							X												
42	S/University of Pennsylvania -- salary																				X											Salary	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Assets and Income	Valuation of Assets at close of reporting period																	Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																	
BLOCK A	BLOCK B																	BLOCK C																	
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type	Dividends	Rent and Royalties	Interest	Capital Gains	Amount	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only If Honoraria
43 S/Washington Post																																	Honoraria 200.00	04/02/06
44 S/Taylor and Francis Group: Book -- Presidents as Candidates value unascertainable																	X				X												
45 S/Rowman & Littlefield (BookChptr): The Makings of the President, Candidates '04 value unascertainable																	X					X											
46 S/Brookings Institution -- Policy Paper																																	Honoraria 2000.00	07/01/06

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vic Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Tenpas, Ronald J.		1

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☒

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)												
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☒

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Explanation to SF-278, Filing for 2006 Calendar Year, Ronald J. Tenpas, Department of Justice

There are several holding that have been removed and others added from my SF-278 filed for Calendar Year 2005 in May 2006. These additions/deletions all resulted from transactions that were less than $1,000.00 called to be reported on Schedule B. The transactions are summarized below.

Holdings Included in 2005 Report, Omitted in 2006 Report

1. Freescale Semiconductor Common Shares – These shares were liquidated in December 2006.

Holdings Not Included in 2005 Report, Included in 2006 Report

1. Axa Enterprise Fund – This holding was added through a series of recurring monthly purchases. Each purchase was less than $1,000.00.
2. Capital World Growth Fund – This holding was added through a series of recurring monthly purchases. Each purchase was less than $1,000.00.

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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☒

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
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6			

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Federal Bar Association, Maryland Chapter, Baltimore, MD (no fixed address)	Bar Association	Board of Governors	1/06	Present
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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Reporting Individual's Name
Tenpas, Ronald J.

ANNOTATIONS and REVIEWER COMMENTS

Profile

Reviewer Comment

Schedule A - Assets and Investment Income

Asset	Annotation	Reviewer Comment
Tamarack Investment Fund (money market)	Some joint; some in own or spouse IRAs	
Bristol Myers Squibb Common		
Diamond Trust Shares Common (Dow Jones Index Fund)		
Sun Microsystems Common		
Boeing Common (IRA)		
Chevron Common (IRA)		
Cisco Systems Common		
Citigroup Common (IRA)		
Coca-Cola Common (IRA)		
Ford Motor Common (IRA)		
General Electric Common (IRA)		
Intel Common (IRA)		
Microsoft Common (IRA)		
Procter & Gamble Common (IRA)		
Vistcon Common (IRA)		
Unilever Common (IRA)		
Columbia International Value Fund (IRA)		
Allianz NFJ Sml Cap Val Fund (Both IRAs)	Asset held in both own IRA and spousal IRA	
EMC Corp. Common (Roth IRA)		
Eaton Vance Special Eqty Fnd (Roth IRAs)	Asset held in both own IRA and spousal IRA	
GAP Inc. Common (Roth IRA)		
McData Corp. Common (Roth IRA)		
Motorola Common (Roth IRAs)	Asset held in both own IRA and spousal IRA	
Axa Enterprises International Growth Fund (Roth IRAs)	Asset held in own IRA and spousal IRA	
Capital World Growth & Income Fund (Roth IRAs)	Asset held in both own IRA and spousal IRA	
JP Morgan International Equity Fund (Roth IRAs)	Asset held in both own IRA and spousal IRA	
Amazon Common (Roth IRA)		

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Time Warner Common (Roth IRA)

TRowePrice International Growth & Income Fund (529 Plan MD)

TRowe Price International Stock Fund (529 Plan MD)

TRowe Price Mid-Cap Growth Fund (529 Plan MD)

TRowe Price Mid-Cap Value Fund (529 Plan MD)

TRowe Price Small-Cap Stock Fund (529 Plan MD)

TRowe Price Spectrum Income Fund (529 Plan MD)

TRowe Price Value Fnd (529 Plan MD)

TRowe Price Blu Chip Grwth Fnd (529 Plan MD)

TRowe Price Eqty Index Fnd (529 Plan MD)

CREF Stock Fund

CREF Growth Fund

CREF Global Equities Fund

CREF Global Bond Market Fund

Schedule A - Non-Investment Income

Income Source	Annotation	Reviewer Comment
University of Pennsylvania -- salary		
Washington Post		
Taylor and Francis Group: Book -- Presidents as Candidates		
Rowman & Littlefield (BookChptr): The Makings of the President, Candidates '04		
Brookings Institution -- Policy Paper: The Veto Free Presidency		

Schedule B - Transactions

Transaction	Annotation	Reviewer Comment

Schedule B - Gifts, Reimbursements, and Travel Expenses

Source	Annotation	Reviewer Comment

Schedule C - Liabilites

Creditor	Annotation	Reviewer Comment

Schedule C - Agreements or Arrangements

Terms	Annotation	Reviewer Comment

Schedule D - Positions Held Outside U.S. Government

Organization	Annotation	Reviewer Comment
Federal Bar Association, Maryland Chapter, Baltimore, MD (no fixed address)		

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Schedule D - Compensation in Excess of $5,000 Paid by One Source

Source	Annotation	Reviewer Comment

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AFFIDAVIT

I, Ronald J. Tenpas, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

31 August 2007
(DATE)

(NAME)

(NOTARY)

Rhodora N. Woolner
Notary Public for the District of Columbia
My commission Expires: April 30, 2010

47206.251

Senator WHITEHOUSE. Thank you, Mr. Tenpas.

I think what we will do, is 5-minute rounds, if that's all right. Senator Cornyn and I will go back and forth, if we are not done in 5 minutes.

First of all, I want to compliment you, Mr. Tenpas, on your really extraordinary academic credentials that you bring to this job. I have competed in the world in which you have been—indeed, I am a fellow graduate of the University of Virginia Law School—but I was not able to accomplish a Supreme Court clerkship, nor a Rhodes scholarship. I do have firsthand experience of exactly how demanding those achievements are.

So it is quite impressive, what you bring to the table in terms of your academic credentials, and I am frankly very pleased that you have chosen to take that skill and that talent and dedicate it to public service, because your record of service is also an exemplary one. We have shared the position of serving as U.S. Attorney. It is truly remarkable position with extraordinary responsibilities and authorities. So, I commend you for that as well.

Unfortunately, we are here in an era in which the news from the Department of Justice is often bad. We are here in a day in which a former Attorney General has gone public with his concerns that probably the most severe and significant sanctions that the Department of Justice can seek, the sanctions of the U.S. criminal law, have been applied in partisan and political fashion in his home State. Of course, we have gone through the sad episode of the most recent Attorney General and his resignation, and the damage that was done to the Department under his tenure.

So it is necessary, I think, when somebody comes to a leadership position in the Department in this environment to inquire into your view as to what role politics should play in the administration of justice, and particularly based on your experience as a career attorney, what you think the role of career attorneys at the Department of Justice should be as an institution in its management and guidance, and, finally, on your personal commitment to political independence. Policies of the Department of Justice, career attorneys, and your commitment to political independence.

Mr. TENPAS. Well, let me take the first and the third together, because I think they link. They are important questions and I think they are easy to address. Politics should play no role in the judgments that the Department makes as cases to bring, cases not to bring, matters to investigate. That is not what the Department is about, or should be about.

We have to be committed to evaluating the facts and the law and making the best judgments we can about how to proceed based on that. I think that links to perhaps your third question about the role of career folks. We are blessed to have, I think, about 6,500 attorneys throughout the Department, overwhelmingly in the career ranks.

My experience, having been one, working side by side, shoulder by shoulder with them, having been a U.S. Attorney and sort of having benefited from the work that they were doing, is that they are the Department's most important asset. The best way to get the good work done, is to have good people and to sort of let them

do their thing. I think we've been blessed in the Department, in all my experience now, to have good people throughout.

In terms of how I anticipate, I hope that I have worked with those career folks, and anticipate working with them. I want to have the benefit of their advice, guidance, insight, experience, and judgment. At the end of the day, I guess in my mind, the question is not, particularly as to any matter, who makes the decision, but that we get the decision right. For me to get decisions right, I'm going to have to have the benefit of their thinking.

I will say, about the first thing I think I said to the supervisory group when I first sat down to meet with them as acting, is I essentially have one preeminent rule when working with supervisory staff, and that is honest counsel. I expect that from them. I expect them to tell me candidly when they think I might be about to make a mistake. I expect them to give me their best judgment on cases that may be close, where reasonable minds can disagree, and to identify those. That's how I hope to work with them. I think that's how I've worked with them in the past.

Senator WHITEHOUSE. And let me ask you to just follow-up and drill down a little further into hiring, promotion, and evaluation decisions. We have heard very unfortunate testimony that those decisions in the Department, and specifically or particularly in the Civil Rights Division, have been tinged by political influence.

Mr. TENPAS. I can't—well, again, I should say I don't think partisan affiliation should have any role in the hiring decisions that we make in the Department. As a line AUSA, I was often on hiring committees that made recommendations to U.S. Attorneys about hiring decisions. Obviously, as a U.S. Attorney I made hiring decisions. I can't recall a time where I was made aware by anybody in that process of somebody's political affiliation.

I suppose sometimes you get a glimpse of that by letters of recommendation or something, but at the end of the day my only question is, do they have the skills and the experience to do the work, and are they committed to doing that work? If you can satisfy yourself on those two questions, then this is something we ought to be thinking seriously about hiring.

Senator WHITEHOUSE. Senator Cornyn.

Senator CORNYN. Thank you, Mr. Tenpas. Congratulations on your nomination, and thank you for your service. I wondered how long it was going to take the Chairman to note that you graduated from the same law school he did, and that I graduated—

Senator WHITEHOUSE. I want to bask in the reflected glory of any Rhodes scholar any way I can.

[Laughter.]

Senator CORNYN. And from which I was glad to receive a graduate law degree in 1990, myself.

But you do have an incredible academic and professional record. I admire the Chairman. He and I served as State Attorney Generals together, he in Rhode Island and me in Texas. But we do like to spar a little bit on public policy issues, and I wanted to just note that the Kyoto Protocol was rejected by the Senate 95:0 in 1997, and of course we have some ongoing debates about the Arctic National Wildlife Refuge and the extent to which we ought to depend

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less on imported oil and more on domestic resources, if it can be produced in an environmentally responsible way.

But my question to you isn't about that, because you're not going to be making policy decisions, are you?

Mr. TENPAS. No.

Senator CORNYN. You're going to be enforcing the law.

Mr. TENPAS. Our job is to take the law that the Congress gives us, and take the facts and apply it, bring those two together as best we can.

Senator CORNYN. So you will let Senator Whitehouse and I fight this out in the Congress, along with all of our colleagues, and then we'll tell you who wins the majority vote and which law is signed by the President. And will you enforce it, regardless of your personal opinions or predilections?

Mr. TENPAS. Absolutely.

Senator CORNYN. Thank you, sir. That's it.

Senator WHITEHOUSE. The statistics on environmental prosecution are a little concerning. I understand that we are existing here in a backdrop of a U.S. law enforcement capability that has been substantially shifted into national security arenas that, several years ago, did not require anywhere near the resources that we now dedicate to them. That may be a significant part of the explanation.

But nevertheless, the Washington Post has recently reported that the EPA now employs only 172 investigators in its Criminal Investigation Division, less than the 200 we require by statute in the Pollution Prosecution Act. The number of environmental prosecutions has gone from 919 in 2001 to 584 last year. The number of people convicted for environmental crimes has dropped from 738 in 2001, to 470 last year. The number of cases opened by EPA investigators has fallen from 482 in 2001 to 305 last year.

What, against the background of those statistics, do you see as the principal areas where the administration in general, and the Department in particular, need to improve in the area of environmental enforcement and where will your initiatives be in that regard?

Mr. TENPAS. Thank you. Thank you for that question. It's obviously, from my own criminal prosecuting background and background as a U.S. Attorney, it's an area, I guess, of particular interest.

First, I think I should just say, although I am aware of the report you're referring to, I think the Department numbers look a little different than what was reported, and I've taken a look at that myself just within the last couple of weeks.

If you look, I think, broadly at all of the Department's environmental prosecutions—which I should note, the EPA referrals are a part of those, but there are many other important areas. We do cases, for example, with the Coast Guard involving vessel pollution. We do a lot of cases related to wildlife and endangered species. So, EPA is a piece, but not the only piece, of our environmental enforcement.

If you look at sort of the—for example, just the number of defendants prosecuted as one metric, what you would see, I think, since 2000 is a little bit of up and down, the kind of thing that I

think I experienced as a U.S. Attorney. You just have some natural fluctuation. Perhaps you did as well.

So if you looked at, for example, the numbers for 2 years ago, in terms of number of defendants prosecuted Department-wide for environmental matters, it would have been higher than 2000. If you had looked at—the year before last, it would have been about even. Last year was down a little bit. So at least from my limited observation to this point, I do not see a particular trend area.

Now, having said that, I think we have got to be vigilant. In terms of my own interests and initiatives, I am particularly interested, I guess—again, perhaps because of my background as a U.S. Attorney—in using the division to identify new areas where you really need focused environmental expertise that we can then pair up with U.S. Attorneys offices to bring our expertise and their presence on the ground to make new prosecution areas.

I'm not sure I've identified a particular place for that yet, but what I have in mind, I think, is something that's been done very successfully over the last 15 to 20 years in the vessel pollution area. If you look back 15 years ago, these are cases in which a ship is at sea, typically rearranges the piping a little bit, and stuff that ought not be getting out into the water or ought to be treated before it's discharged gets out, and those ships will come into port and they will often file false documents with the Coast Guard, false records, to cover that up.

Fifteen years ago, that would have been a pretty exotic kind of case to bring. It was not something that a U.S. Attorney's Office would have routinely confronted. But our division, over time, focused on that, identified that as a problem with the Coast Guard, and has made an effort to work with U.S. Attorneys.

So now if you go to places like your former office, the U.S. Attorney's Office in Oregon, the U.S. Attorney's Office in Boston, recently in Maryland, these are now offices where those are part of some of the routine work that they're doing as part of their criminal enforcement. I guess if I had one ambition it would be for promoting that model between our attorneys in Washington and the U.S. Attorneys offices.

Senator WHITEHOUSE. That makes a good segue into my next question, which has a broad and a narrow component. The broad component has to do with the value of cooperation and coordination between Federal efforts at environmental enforcement and State and local efforts at environmental enforcement, and within that, the narrowly targeted concern regarding environmental settlements.

Through the concern that has been expressed by many that the government can engage in a sort of strategic sue-to-settle scheme, bringing essentially friendly litigation against a polluter, and by keeping the settlement process secret and keeping environmental groups and other folks who would wish to comment on the settlement out of it, then release the settlement that has, sort of, at least within the Department, some precedential effect and makes a point about the execution of laws that may or may not be valid.

So I'm interested in your take on the importance of interagency cooperation at the State and municipal level as well, and very specifically, when it comes to settlements, are you prepared to assure

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the committee that the negotiations will be open ones and there will be opportunity for public comment before a settlement is concluded so that this kind of strategic sue-to-settle scheme isn't permitted to advance?

Mr. TENPAS. Let me take those in that order, because you've raised two important things. First, in terms of partnerships with State and locals, again, my experience as U.S. Attorney was, we always did better if we were working in tandem with the local prosecuting office, the State Attorney General's Office. I think that has been a mark of what the division has done over the years. You have noted a couple of cases, for example, in your opening remarks that had that characteristic.

The case you referred to in particular that you joined on behalf of Rhode Island involving AEB was, as a perfect example of that, there were seven State Attorneys General involved in that matter. There were a number of citizen groups, environmental groups that joined as co-plaintiffs in that. Through that cooperative, collective effort, we achieved a remarkable, remarkable result.

I say "we". I should be straightforward here and say I had the good fortune to sort of come in on the tail end of 8 years of incredible work by those career folks we've talked about earlier. So, that has to be an aspect of how we do our job every day, and I am committed to making sure we continue to do that.

On the second question, the strategic sue-to-settle, I'd say that I'm not aware of any cases that have been identified with Department involvement where that has been particularly raised as a concern. I'll be happy to look at it if there are particular matters. Certainly in the cases that I've seen, I would say that couldn't be a characteristic because most of our settlements get lodged with the court, they get published in the Federal Register, and there is a public comment period attendant to the settlement.

In fact, we typically do not move the court for final entry of the settlement and the consent decree in a case where we've sued until after that public comment has been received and we've had a chance to look at it and make sure that folks aren't raising a concern that we were unfamiliar with at the time we negotiated the settlement. So, I am committed to their being openness in that process to make sure that we get that kind of partnership with both State Attorneys General and citizens groups that you have referred to.

Senator WHITEHOUSE. Let me ask you one final question. Your academic credentials could propel you to any law firm in the country, very likely to any investment bank in the country. You could be in the top 1 percent of income earners who are presently in America, enjoying 20 percent of the total income of the country. You have young William, who is doing a wonderful job here today, and your 12-year-old to take care of. Why on earth—from your heart, tell me, why on earth do you work for the Department of Justice?

Mr. TENPAS. I simply—in a sense, the answer is selfish: I love the feeling of getting up every day and serving the public. It's what gets my juices going. It's probably not much more sophisticated or complicated than that. It was something that I had an urge to do 20 years ago that was part of the Rhodes scholar process. I have

had the benefit of a preserving and understanding wife, who has perhaps put up with more than she should have to let me have that opportunity of public service.

Senator WHITEHOUSE. We on this side of the rail understand that phenomenon as well.

Mr. TENPAS. So it is, I guess, a two-part answer. It's just what I love to do. It's where I get tremendous satisfaction at the end of the day. It's intellectually challenging. I've had the support of a family who was willing to humor me in that for the last 10 years.

Senator WHITEHOUSE. Well, I, for one, appreciate that you've chosen to dedicate your very considerable talents to the service of our country.

The hearing will remain open for another 2 weeks in case there are further statements that anybody wishes to enter, but for now, Mr. Tenpas, congratulations. The hearing is adjourned.

Mr. TENPAS. Thank you. And thank you very much for chairing today.

Senator WHITEHOUSE. The hearing on you is adjourned.

The hearing on the judges will now go forward if, once the table is cleared, they will take their seats.

I'm sorry to interrupt the proceedings, briefly, but I'm told that a floor vote has begun on a judicial nomination that has gone all the way to the Senate floor. So in order not to miss that vote, I need to adjourn for probably—well, let's give me 10 minutes just to make sure, to go and cast my vote and then come back. So, we will resume in 10 minutes.

[Whereupon, at 11:10 a.m. the hearing was recessed.]

AFTER RECESS [11:27 a.m.]

Senator WHITEHOUSE. May the committee come to order.

I want to swear in the witnesses.

[Whereupon, the witnesses were duly sworn.]

Senator WHITEHOUSE. I will make a brief statement, and then I will invite each of the nominees to introduce their families who are present, and to make any statement if they wish. It is not obligatory; you may or may not at your entire discretion and convenience. Then we can have a short discussion, and that will be the hearing.

STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. One of the most important decisions that Senators make, one that is particularly live in all of our minds today as we consider a controversial nominee on the Senate floor, is to vote to confirm an individual to the Federal bench.

Not only do Federal judges make daily decisions about life, liberty and property, not only do they serve as our constitutional check on the executive and legislative branches, but they do so with a lifetime appointment. In this way, their work is meant to be independent of the ephemera of political dispute, what Alexander Hamilton called the "ill humors of the day". This was also an enormous responsibility.

So this hearing is our opportunity—our first and last opportunity, really for Senators and for the American people to consider whether the nominees are deserving of that lifetime responsibility.

It is an opportunity to explore the qualifications, the judicial philosophy, the judicial temperament, and the commitment to equal justice of nominees who seek to serve on our Federal courts,

I would like to thank Chairman Leahy for giving me the opportunity to chair this important hearing, and I would also like to take a moment to commend Chairman Leahy's leadership in confirming judicial nominations during this Congress; indeed, the Senate has already confirmed 34 nominations for lifetime appointments to the Federal bench this session alone. This is more judicial nominations than were confirmed in all of 2005 or 2006. So the odds look better.

To conclude, I look forward to the opening statements, if there are any, and to the answers to our questions from each of the nominees.

There being no Senator from the Minority present, let me just simply go from Mr. Laplante across and give you the opportunity to introduce your families to the committee.

Mr. LAPLANTE. Thank you, Senator. I am here today with my wife, Carol, and my three children: Marcel, Marie, and Andre; my parents, Normand and Jacqueline Laplante, as well as my sister, Anne, Anne Phillips. Thank you for letting me introduce my family and thanking them for being here, Senator, and thank you for chairing the hearing. I do not have an opening statement, and I will just answer the committee's questions.

Senator WHITEHOUSE. That is fine.

I think what I'll do, is I'll continue with this and then I'll have to break again. The first vote was on cloture and evidently did not succeed, so now we are going to the up-or-down vote, so I have to dash back to the Senate floor again. My apologies to all of you, but as I said, that is the nature of the beast.

Mr. O'Connor.

Mr. O'CONNOR. Thank you, Senator. My wife, Tammy, my two girls, Caitlin and Maggie, and my mother Eileen, and my sister Kathleen, and then I have two friends from Ft. Worth, Bret Helmer and Kurt Stallings.

Senator WHITEHOUSE. They must be good friends to have come all this way. That's very kind of them, and I welcome your family.

Mr. LAPLANTE. Thank you, Senator.

Senator WHITEHOUSE. Mr. Schroeder?

Mr. SCHROEDER. Thank you, Senator. My wife, Kem, and my daughter, Katie, and my son, Cy, are here. My brother, Paul and his wife, from Hershey, Pennsylvania are here. My mother could not make it, but she, I hope, is watching on the web cast.

Senator WHITEHOUSE. I hope so, too. That's why we give you the opportunity to make these introductions, so if she's watching she'll know that you're thinking of her right now.

Mr. SCHROEDER. I am. Thank you.

Senator WHITEHOUSE. Mr. Thapar.

Mr. THAPAR. Thank you, Senator. I want to thank you for chairing this hearing. My wife, Kim, my son, Zachary, my daughter, Carmen, and my 3-year-old, that's being a little raucous, for which I apologize, Nicholas.

Senator WHITEHOUSE. I have to tell you, by three-year-old standards, Nicholas is doing a phenomenal job.

[Laughter.]

Mr. THAPAR. Well, thank you.

Senator WHITEHOUSE. We are very impressed.

Mr. THAPAR. We bribed him with some candy.

Senator WHITEHOUSE. We are very impressed.

Mr. THAPAR. My dad is here. It's his 65th birthday. He wanted me to personally thank you for holding this on his birthday.

My mom, who came from Italy, my step-mom, Rama, my uncle Amar Mamajie, and my other uncle, Anand Bhasin. Then I also have my sister here, Vandana. My dad brought some friends. I also have three friends here: John Yang from NAPABA, and Wiley Rhine, and I greatly appreciate him being here. And Bob van Kirk and Tobey Ramiro from my former law firm, Williams and Connell.

Senator WHITEHOUSE. Well, that's a very impressive group. I'm so glad you're all here. Now it's my time to yet again turn this off-again/on-again hearing off again very briefly. But we'll be on again shortly and we will stand in recess for 10 minutes.

[Whereupon, at 11:34 a.m. the hearing was recessed.]

AFTER RECESS [11:48 a.m.]

Senator WHITEHOUSE. I understand that there is one more introduction to be made. Mr. Thapar?

Mr. THAPAR. Thank you, Senator. My mother-in-law is also here, Joan Schulte, and I'm very honored to have her here. Thank you.

Senator WHITEHOUSE. Oh, how wonderful. That was important.

[Laughter.]

I do wish to correct the record. The record of this hearing will not be open for 2 weeks, it will only be open for 1 week, which will allow for more rapid and expeditious consideration, so I don't think that's to anybody's prejudice. But it will only be 1 week, and that will be for Mr. Tenpas, as well as for the judicial candidates.

First of all, let me tell you how pleased I am to see four people with such exemplary qualifications and who have such warm and enthusiastic backing from their Senators, coming forward and being willing to serve in the difficult and challenging capacity as a U.S. District Court Judge. I fear, as a graduate of the Department of Justice, that the Judiciary's gain is going to be the Department's loss in a rather big way today, but particularly for those of you who have served in the Department, and are serving in the Department. I want to express my gratitude for that service.

In the military, there are officers and there are enlisted men. In the Department of Justice U.S. Attorney corps, there are U.S. Attorneys and there are Assistant U.S. Attorneys, and we have one of each here. But in the military there is also something called a sergeant-major, who, although he doesn't outrank officers, customarily officers report to him.

In the Department of Justice and the U.S. Attorney's Office, that tends to be the First Assistant U.S. Attorney. So I am particularly pleased, Mr. Laplante, that you have served as a First Assistant U.S. Attorney. I well remember Ted Gail and Craig Moore, who served as my First Assistants in my tenure, and their dedication and their contributions to a well-run and effective office. So to each of you, thank you very much for being here.

I will not draw this out long. You are all very talented people, but you are also embarking on a lifetime job, a lifetime call of service that will bring before you people whose fates, whose fortunes,

whose reputations, and whose very lives may be in your hands. I have argued in courts all over the place, State courts, right down to administrative tribunals and Federal courts, right up to the U.S. Supreme Court.

The one thing that has been most important to me is to walk into that courtroom with the feeling that I've got a fair shot with that judge no matter what argument I'm making, no matter what political or other background I bring into the courtroom, no matter what I look like or who I choose to live with, no matter any of that.

In my professional life, the most sickening moments have been those when I have walked into a courtroom without that feeling. So in that context, it seems to me that the issues of today, what I described earlier as the "ill humors of the particular moment" will pass and new ones will emerge.

Over time, the constant touchstone that will determine your quality as U.S. District Court Judges will be your independence and your even-handedness; different, but related qualities. So I would simply like to ask each of you to speak just from your hearts for a few moments about what, to you, this office means and what, to you, the importance, for litigants who come before you, having the true confidence that you will be both independent and even-handed means.

Mr. Laplante.

Mr. LAPLANTE. To me, a person who has chosen to make a career in the trial courts, the skills and the opportunities that are available to a judge, and specifically a member of the Federal judiciary, really provide an opportunity to serve at the highest level of what is dispute resolution. Public confidence depends completely upon the confidence not of the public as a whole, but as every citizen as an individual in getting a fair shake in court, in believing that every participant in the process is fair, but most importantly, of course, is the judge.

I have tried to, in my career as a prosecutor, be willing to distinguish myself with an open-mindedness and an openness and an empathy for defendants and defense counsel. It's easy for me to fit the role of the prosecutor; you're there every day, you're doing the job. But the role of a defense counsel and a defendant is—of course, they are integral parts of the process. I have really tried to distinguish myself to be open to them, to be empathetic, being available. I have had conversations, in my own experience, with criminal defendants whose cooperation with the government I am trying to secure.

I personally involve myself in those discussions, which is not something that all prosecutors do, not even all prosecutors think is a very good idea, frankly. But I've made a decision to do that and I've developed the reputation for being open, even-handed, and empathetic. That has allowed me, I think, to serve the public better. I'd like to bring that attitude, that approach, to the court, if confirmed, and acting as a District Court judge, to continue that reputation and, frankly, to distinguish myself for that in the future.

Senator WHITEHOUSE. And with respect to independence, one of the concerns, unfortunately, that we have in this day and age is that judges are being brought forward as Trojan horses, containing within them beliefs in particular political orthodoxy that will be ap-

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plied from the bench rather than even-handed application of the law.

Mr. LAPLANTE. Independence, Senator, is one of the most important qualifications of a judge. The only loyalty I would have to—the only loyalty I would bring to the job of U.S. District Court Judge, if confirmed, would be loyalty to the law, as set forth by the Congress and the Constitution of the United States. No one else. No other institution or person should enjoy the loyalty of a U.S. District Court Judge.

Senator WHITEHOUSE. Thank you.

Mr. O'Connor.

Mr. O'CONNOR. Yes, sir. Senator, thank you. I agree with what was said. I think it is important that a judge, and particularly a District judge, hold themselves in the highest—to the highest ethical standards, fiercely loyal and independent, and loyal only to the Constitution, and to call the cases as they see them. In terms of the people that appear in front of them, I think it is important for a District judge to ensure that their decisions are carried out fairly and impartially.

It's important for the Bar. It's important for members of the Bar to have that sort of confidence in the judges that they appear in front of. I think it is even more important for the litigants because many times individual litigants appear in front of the judiciary one time. It's their only encounter, perhaps in their lives, with the judiciary.

So any District judge in that situation will be the face for all judges for the entire judiciary. And I think you mentioned earlier about the public confidence in the judiciary. It boils down to each individual case, one by one. So it's important for any District judge, and if I were to be confirmed, for me to achieve that standard each and every time in every case.

Senator WHITEHOUSE. Yes. As effective as the U.S. Marshall Service is, their ability to enforce judicial orders is negligible compared to the weight and scope of judicial orders that are sent down every year. So it is the reputation of the judiciary that will do that.

I just want to comment, Mr. O'Connor, that this may very well be your last appearance with this committee, that you have served proudly and well, and I wish you godspeed.

Mr. O'CONNOR. Thank you.

Senator WHITEHOUSE. Mr. Schroeder.

Mr. SCHROEDER. Senator, I could not agree more, independence and even-handedness are of utmost importance. I, too, have appeared in courtrooms where, to my dismay, I have felt like I did not get the fair treatment or consideration that I thought would have been appropriate. I know what that feels like.

Senator WHITEHOUSE. Keep that feeling with you.

Mr. SCHROEDER. I will. I will, Senator. And I think this is an awesome responsibility to be a Federal District judge. It is our duty, if confirmed, to uphold the rule of law and to ensure that what process is available is due process for every litigant who comes before the court, no matter what their background, their race, or religion. It is in that way that I've tried to carry myself within my private practice and my law firm, in the committees and the work I've done in the law firm and in my community, and if

confirmed it would be my honor and duty to continue to act that way as a Federal District judge.

Senator WHITEHOUSE. Well, thank you.

Let me congratulate you, also. I believe your daughter is very interested in Habitat?

Mr. SCHROEDER. That's correct, yes.

Senator WHITEHOUSE. I have a daughter as well who ran the Habitat Club at her high school. So, we are both proud fathers of daughters who have a similar interest, and I welcome you to the committee and I thank you for your service.

U.S. Attorney Thapar, I'm glad you are with us. I assume you concur with my remarks about First Assistants?

Mr. THAPAR. I do, knowing how good advice my First Assistant gives, essentially, and all the great work he does running the office, essentially.

Senator WHITEHOUSE. Your comments, sir?

Mr. THAPAR. I concur with everything my colleagues said, and you said, Senator. I think one of the things I learned along the way, and also from my two judges that I clerked for, is the importance of every case and the fact that, as my colleagues have said, the litigants that come before you, while it may not be—it may be a Social Security case.

It may be that it's the most important case in their life, and you represent maybe their one interaction with the judiciary in their whole life. And they walk out and they talk about the judiciary, and so they should walk in and feel like you're fair, feel like you're even-handed, feel like you have no pre-conceived notions or issues, and that you're well-versed in the law.

And I believe—you know, when I was in law school, people always tell you their stories about law and courts. A friend of my dad's said to me that he was in court and he lost, but he said the judge was very fair and the judge explained to me, took the time to explain to me, why I lost. And he walked out, losing a lawsuit, having a better impression of the judiciary.

What I'd like, if I'm fortunate enough to be confirmed, is for people to walk in and not know who I was appointed by, not know who I was confirmed by, and walk out and not know those things either and think, I got a fair shake: he explained everything to me, he was very courteous, he treated me well. I want the lawyers to feel the same way. I want them to say, if I'm fortunate enough to be confirmed, Judge Thapar always gives us a fair shake and lets us do our things, and both sides feel like they get that. Thank you, Senator.

Senator WHITEHOUSE. Let me ask a specific question of each of you that is a little bit more of a legal question, and then we will conclude the proceedings. We have seen recently an explosion of a device called a signing statement, which takes place when Congress passes a law and it goes to the President of the United States, and he either doesn't choose to veto it, or knows the veto will be overridden, or experiences the override of his veto, and then in signing the law, appends a statement to it that expresses his opinion as to the scope and effect of the law that was just passed.

I studied a little bit of constitutional law along the way and I have a fairly strong view about the different roles of the separate

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branches of government in our system of separated and balanced powers, and I'm interested in your views.

Assume a case before you under a statute that is the controlling law to which a President has appended a signing statement. In your evaluation of what the law is, what weight will you give the signing statement? They're already looking out for each other.

Mr. LAPLANTE. Thank you. Senator, I think this question involves the structural rudiment of our constitutional system, which is the separation of powers. The separation of powers requires that the Federal judiciary interpret the law, that the executive branch enforce the law, and that the legislative branch, the Congress, make the law.

The statute before me—I would interpret it based on its text. I would apply the meaning of the text to the facts at hand, guided by precedent to the extent it existed. My view is that a signing statement is an interpretation or an instruction to effectuate the law, enforce the law, but it is not the law itself and it would not aid me in my interpretation of the law as enacted by the Congress.

Senator WHITEHOUSE. Thank you.

Mr. O'CONNOR. Yes, Senator. I agree. A signing statement is what it is. The most important thing for a District judge is, what does the text of the statute say, what did Congress enact? That's where the focus is, and that's where I believe the duty of a particular District judge, and on up the chain—that's where their focus should lie: what is the text, what is the meaning of the text, what did the Congress intend? The judiciary should implement or rule in accordance with the text of the statute.

Mr. SCHROEDER. Senator, I agree with what has been said before.

Senator WHITEHOUSE. It's good to go after good answers, isn't it?

Mr. SCHROEDER. It is. I agree that our system of the balance of power, Congress writes the laws and the executive branch enforces the law, and it's the judicial branch's job to say what the law is, ever since *Marbury* v. *Madison*. In order to have the proper checks and balances in our co-equal branch of government, we have to give due respect to that system.

I would, too, also start with the text of any law passed by Congress, because I think that is, of course, where we ought to start, and try to determine what it was that Congress intended based on what Congress said.

Senator WHITEHOUSE. U.S. Attorney Thapar?

Mr. THAPAR. I concur with my colleagues. I think it's a little hard to go last because they've given such excellent answers. But I would concur with what they said. The other place I would look is to precedent, because stare decisis is so important, and how my Circuit or the Supreme Court has interpreted it, and look to other Circuits if there's nothing there, to get help from people smarter than me that have interpreted it.

But I think it's important that you start with the text, and we respect the separation of powers. What's done by the Congress is extremely important. You spend a lot of time doing it, as we've seen today, and I think that's important that judges give it due weight.

Senator WHITEHOUSE. Well, I thank you all very much. I will close this hearing. I do wish to again express my appreciation for

the decision that you have made in your lives to take the very considerable talents and abilities that you bring to this table and dedicate them to our country's service in the judicial branch of government.

As I said to Mr. Tenpas earlier, you are probably among the people who, if you applied those skills elsewhere, could put yourself in the 1 percent of the American population that currently enjoys 20 percent of the country's entire income, and you've chosen not to do that. You've chosen a different path and you've chosen it for a reason. I urge you, through your—I hope, should you be confirmed—long and successful tenures on the judiciary, that you will remember that little spark that has caused you to make that decision and keep it well alive within you.

Just as somebody who has lived in the sort of political and governmental life, I want to express my appreciation to your families for allowing you to do this. What you do, you do at considerable sacrifice from your family. Over the years, they will put up with a certain amount of nonsense, a certain amount of criticism, consider opportunity cost. But I hope that it is made up for, in their eyes and hearts, by the pride that they feel in the choices that you have made and the loyalty that they feel to the country you've chosen to serve.

So, I thank you all very much, and I conclude the hearing. It will remain open for 1 week. Thank you.

[Whereupon, at 12:09 p.m. the committee was adjourned.]

[The biographical information and questions and answers and submissions for the record follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name: Full name (include any former names used).**

   Reed Charles O'Connor

2. **Position: State the position for which you have been nominated.**

   United States District Judge for the Northern District of Texas

3. **Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.**

   Office:
   Senate Dirksen Office Building, Room 141
   Washington D.C. 20510

   Residence: Vienna, Virginia

4. **Birthplace: State year and place of birth.**

   1965
   Houston, Texas

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Married to Tammy Herrin
   Attorney, Exxon Mobil Corporation
   3225 Gallows Road Room 3C 2117
   Fairfax, Virginia 22037
   We have two dependent children.

6. **Education: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.**

   University of Houston, 1992-1993, no additional degree
   South Texas College of Law, 1987-1989; Juris Doctor, 1989

47206.252

University of Houston, 1984-1986; Bachelor of Science, Education, 1986
Sam Houston State University, 1983-1984, no degree
San Jacinto Jr. College, 1983, no degree

7. **Employment Record: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.**

1998 – present: Assistant United States Attorney
USAO, Fort Worth, Texas

2002-present: detailed to Washington, D.C. from Fort Worth USAO

January 2005 – present – detailed to Subcommittee on Immigration, Border Security and Citizenship (Senator John Cornyn)

January 2003 – January 2005 – Counsel, Senate Judiciary Committee, Majority Staff

September 2002 – January 2003 – Counsel, General Counsel's Office, Executive Office of United States Attorneys

1994–98: Assistant District Attorney
Tarrant County District Attorney's Office, Fort Worth, Texas

1989–1994: Associate, Vinson & Elkins, L.L.P. Houston, Texas

1989: Summer Associate, Bracewell & Patterson

1986–1987: Teacher/Coach, Sugar Land Middle School, Sugar Land, Texas

8. **Military Service and Draft Status: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.**

None.

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Member, Eldon B. Mahon Inn of Court

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10. **Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.**

State Bar of Texas
American Bar Association
Tarrant Country Bar Association

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Admitted to the State Bar of Texas in 1990.

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

State Bar of Texas (1990) (All Texas State Courts)
United States District Court for the Southern District of Texas (1990)
United States District Court for the Northern District of Texas (1998)
United States Court of Appeals for the Fifth Circuit (2001)

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Eldon B. Mahon Inn of Court 1999-2002

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or

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the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

None.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have delivered the following speeches. I have no prepared text or notes from any of the remarks and am aware of no transcripts.

Federalist Society Chapter, South Texas College of Law, Houston, Texas (November 2006); Topic: Federal Criminal Law and the Commerce Clause

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South Texas Property Rights Association, Corpus Christi (September 2006); Topic: immigration reform (legislative update)

Texas and Southwestern Cattle Raisers Association (July 2006); Topic: immigration reform (legislative update)

University of North Texas, Denton, Texas (March 2006); Topic: education legislation (legislative update)

North Texas Republican Women's Club, Gainesville, Texas (September 2005); Topic: nominations update

Cosmos Club, Washington, D.C. (March 2005); Topic: Patriot Act (panel discussion)

National Asian Pacific American Bar Association, Dallas, Texas (November 2004); Topic: Patriot Act (panel discussion)

Department of Justice, Justice TV, Washington, D.C. (October 2002); Topic: Project Safe Neighborhood presentation

State Court Criminal Justice Officials, Fort Worth, Texas (August 2002); Topic: child pornography prosecutions

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, please provide:**

a. citations for all opinions you have written (including concurrences and dissents);

b. a list of cases in which certiorari has been requested or granted;

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c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never served as a judge.

16. **Recusal: If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:**

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have never served as a judge.

17. **Public Office, Political Activities and Affiliations:**

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies

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you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

18. **Legal Career: Please answer each part separately.**

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1998–present: employed as an Assistant United States Attorney, USAO, 801 Cherry Street, Fort Worth, Texas

2002–present: detailed to Washington, D.C. from Fort Worth USAO

January 2005 – present – detailed to Immigration, Border Security and Citizenship subcommittee (Senator John Cornyn)

January 2003 – January 2005 – Counsel, Senate Judiciary Committee, Majority Staff

September 2002 – January 2003 – Counsel, General Counsel's Office, Department of Justice, Executive Office of United States Attorneys

1994–1998: employed as an Assistant District Attorney, Tarrant County District Attorney's Office, 401 West Belknap, Fort Worth, Texas

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1989–1994: employed as an associate attorney with Vinson & Elkins, L.L.P. 1001 Fannin, Houston, Texas

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

After law school, I spent five years (1989-94) as an associate at Vinson & Elkins, L.L.P. in Houston, Texas. My practice area was civil litigation, and I handled all pre-trial and trial phases of commercial, real estate, and insurance defense matters.

In 1994, I joined the Tarrant County District Attorney's office in Fort Worth, Texas, as an Assistant District Attorney. I reviewed, investigated, and tried criminal cases, including aggravated robbery, economic crimes, and murder. During my four-plus years as a state prosecutor (1994-1998), I handled more than 70 jury trials while conducting grand jury investigations and presentations, as well as appellate and trial briefing.

In late 1998, I became an Assistant United States Attorney for the Northern District of Texas. I reviewed, investigated and tried violent, white collar and narcotics cases while also conducting appellate and trial briefing.

In September 2002, I was detailed to the Executive Office for United States Attorneys (EOUSA) in Washington, D.C., as a Counsel in EOUSA's General Counsel's Office. I provided ethical guidance on grant programs for the Attorney General's Project Safe Neighborhoods initiative; provided various U.S. Attorneys Offices with recommendations concerning ongoing administrative and personnel issues in their offices; and provided advice concerning outside activities and other potential conflicts of interest (including financial) to attorney, professional, and non-professional personnel in the various U.S. Attorneys' offices across the country.

In January 2003, I was detailed as a Counsel to the majority staff of the Senate Judiciary Committee. I worked on criminal issues related to legislative hearings and nominations.

Since January 2005, I have been detailed to the Immigration, Border Security and Citizenship subcommittee (Senator John Cornyn Chairman/Ranking Member), where I have worked on the variety of issues handled by the Senate Judiciary Committee.

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ii. your typical clients and the areas, if any, in which you have specialized.

While at Vinson & Elkins, representative clients included then First City Bank, Outboard Marine Corporation, Scurlock Permian Corporation; and Mitchell Energy Corporation.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I was a litigation associate while at Vinson & Elkins from 1989 until 1994 and appeared in court occasionally. From 1994 through 1998 while at the District Attorneys office and from 1998 through 2002 while at the United States Attorneys Office, I litigated criminal cases and appeared in court frequently.

i. Indicate the percentage of your practice in:

1. federal courts:	50%
2. state courts of record;	50%
3. other courts.	

ii. Indicate the percentage of your practice in:

1. civil proceedings;	30%
2. criminal proceedings.	70%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 85 cases to verdict. I would estimate that at least half were as lead counsel and half were as co-counsel.

i. What percentage of these trials were:

1. jury:	90%
2. non-jury:	10%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

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19. **Litigation: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

    a. **the date of representation;**

    b. **the name of the court and the name of the judge or judges before whom the case was litigated; and**

    c. **the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.**

    1. State of Texas v. Federico Perales, Docket Number 0654707D. The case was tried before Judge Sharen Wilson, Criminal District Court 1, Tarrant County, Fort Worth, Texas, in October 1998.

    As an Assistant District Attorney, I represented the State of Texas against Federico Perales who stabbed and killed his wife, in front of his two children, during dinner. He claimed that he was suffering from hypoglycemia at the time of the killing and did not realize what he was doing. Perales was convicted and sentenced to fifty years in prison.

    I tried the case with Betty Arvin, Tarrant County District Attorney's Office, 401 W. Belknap, Fort Worth, Texas 76102; (817) 884-1400. Perales was represented by Leon Haley, 1319 Ballinger Street, Fort Worth, Texas 76102.

    2. State of Texas v. Robert Eugene Coleman, Docket Number 0643164D. The case was tried before Judge Clyde Whiteside, Criminal District Court, Tarrant County, Fort Worth, Texas, in July 1998.

    As an Assistant District Attorney, I represented the State of Texas against Robert Eugene Coleman. Coleman shot and killed his wife the day after Christmas 1996, in front of his 8-year-old child. He claimed that his wife pulled a gun on him, they then engaged in a physical altercation, and the gun accidentally discharged killing her. Coleman was convicted and sentenced to twenty years in prison.

    I tried the case with Alan Levy, Tarrant County District Attorney's Office, 401 W. Belknap, Fort Worth, Texas 76102; (817) 884-1400. Coleman was represented by Charles Baldwin, who is now deceased.

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9. United States v. Brenson Stovall, Docket Number 4:99-CR-175-P. The case was tried before Judge Jorge Soliz, United States District Court, Dallas, Texas.

As an Assistant United States Attorney, I represented the United States against Brenson Stovall. On four occasions, Stovall and another robbed armored car trucks as the couriers picked up deposits from various stores. Stovall and his accomplice would select a store whose deposits were transported by armored car. They would wait for the courier to enter the store, pick up the deposits, at which time Stovall and his accomplice would confront the guard with a firearm and take the deposits. Stovall was arrested after the car he was driving was identified during a getaway from a robbery. He was indicted on four counts of interference with commerce by robbery (Hobbs Act) and a count for the use of a firearm in connection with each robbery. Stovall was convicted on three of the four robberies and was sentenced to 67 years in prison.

Stovall was represented by Neil Durrance, 1108 N Locust St., Denton, Texas 76201-6051; (817) 898-1975.

10. United States v. James W. McFarland, 264 F.3d 557 aff'd 311 F.3d 376 (5th Cir. 2002). The case was tried before Judge Terry R. Means, United States District Court, Fort Worth, Texas.

As an Assistant United States Attorney, I represented the United States against James W. McFarland. On four different dates in a one-month period in 1998, James W. McFarland, who had previously served time in prison, robbed four different retail convenience stores in Ft. Worth, Texas. McFarland would enter each store, pretend to look for something to buy, and when he was the only customer in the store, approach the clerk at the cash register and pull out a pistol. He would then instruct the clerk to open the cash drawer and then lie down on the floor; he would reach into the cash drawer and take the money and tell the clerk to stay on the floor for five minutes. McFarland was indicted on five counts of interference with interstate commerce by robbery (Hobbs Act) and a count for use of a firearm in commission of a federal felony on each of the robberies. McFarland was convicted on four of the five counts and sentenced to 97 ½ years.

McFarland was represented by Steve Baer, 12830 Hillcrest Rd., Suite 111, Dallas, Texas 75230; (972) 364-9020.

20. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of

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such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

1. United States v. Carolyn Swank

As an Assistant United States Attorney, I prosecuted Carolyn Swank for mail fraud. Swank took advantage of her position as a bookkeeper for the Texas Child Protection Services (CPS) and engaged in an extensive scheme to embezzle and divert funds to her personal use that were intended to be used by CPS for foster children under their supervision. Swank submitted false requests for funds on behalf of foster children, wrongfully deposited checks made payable to others into her personal account, submitted false reports to the Social Security Administration to obtain funds, and withdrew funds from savings accounts belonging to foster children for her own benefit.

Swank plead guilty in 2001 before Judge Eldon B. Mahon, United States District Court, Fort Worth, Texas. Swank was represented by Milton Earl Haberer, Jr., 8632 Canyon Crest Rd. Fort Worth, Texas 76179; (817) 822-3054. Swank was sentenced to 37 months in prison.

2. State of Texas v. Larry Fenske

As an Assistant District Attorney, I represented the State of Texas against Larry Fenske. Fenske established a bail bond business on the north side of Fort Worth, Texas, and arranged to have transient people work in the front office area to interact with clients and receive bond payments. Many of the requests for bail bonds came from family members and friends who wanted to bail a loved one or friend out of jail. Fenske, through others, took their money and promised to bail the person out of jail. He regularly took payments intended to be used for bail, did not bail the person out of jail, and instead kept the money. Apart from the incarcerated person waiting to be released on bail, Fenske's scheme victimized many poor family members who borrowed and scraped together enough money to post bail. Fenske plead guilty to theft before Joe Drago, Criminal District Court # 4 in Tarrant County, Fort Worth, Texas. He was sentenced to probation.

3. Surety Bank Investigation

As an Assistant United States Attorney, I assisted in an investigation of fraudulent activities at Surety Bank in Fort Worth, Texas. That investigation led to the prosecution of the bank's former Chairman, Charles Jack Bean, and its President, G. Mathias Heinzelmann, III. Beginning in 1996, Heinzelmann, with the approval of Bean, diverted money owed to certain bank customers and applied the diversions to cover other bank debts in order to avoid having Surety Bank take a loss. This scheme allowed Surety Bank to overstate its profits and understate its losses. Bean and Heinzelmann were sentenced to probation.

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4. Legislative staff experience

While detailed to the United States Senate Committee on the Judiciary, I drafted proposed legislation, amendments, and committee and floor statements. I advised the Chairman with respect to crime-related hearings and legislation, provided policy advice to Committee members, and offered counsel to Congressional staff on proposed legislation. Significant legislative issues I worked on include the Law Enforcement Officers Safety Act, Criminal Spam Act, Patriot Act Reauthorization, immigration reform, and the Open Government Act. The legislative work I have been involved in represents a range of diverse and complex legal and policy topics—including: criminal law, constitutional law, administrative law, executive privilege, national security law and privacy rights.

20. Teaching: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

None.

21. Deferred Income/ Future Benefits: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Restricted Stock Units in ExxonMobil stock

Restriction lapses 11/2007	675 shares
Restriction lapses 11/2010	1350 shares
Restriction lapses 11/2011	1350 shares

Expected income: Surface lease – Iredell, Texas; $750.00 per year

Contingent Income: 25% royalty interest on mineral lease in Iredell, Texas

22. Outside Commitments During Court Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

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23. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See Attached Financial Disclosure Report.

24. **Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).**

See Attached Net Worth Statement

25. **Potential Conflicts of Interest:**

a. **Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.**

Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated, should I be confirmed, would include any matter affecting ExxonMobil Corporation, my wife's employer, and any person or entity that I have a business or personal relationship with. In all cases, I would fully comply with the Code of Conduct for United States Judges and applicable statutes.

b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

If confirmed, I would follow the Code of Conduct for United States Judges and any other applicable rules and statutes. In practice, I would examine the pleadings of every case upon assignment to identify, at the earliest possible time, if any litigation or party presents a conflict of interest.

26. **Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I have participated in the Houston Volunteer Lawyers Program and Legal Lines Program. As a volunteer, I accepted pro bono cases from indigent litigants as well as

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answered legal questions from callers. Both programs were sponsored by the Houston Bar Association. I have also participated in the North Richland Hills Teen Court program, working with teenagers who have been placed in the legal system for minor offenses. Additionally, my wife and I have donated to The Lamb Center, Goodwill, and our Church.

27. Selection Process:

c. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

The Texas Senators have a judicial evaluation committee that advises the Senators on judicial and United States Attorney nominations. The committee is comprised of members of the State Bar. I was one of the candidates the judicial evaluation committee interviewed. I was one of the applicants the committee recommended for an interview with the Senators and was subsequently interviewed by Senator Hutchinson and Senator Cornyn. I was later interviewed by staff from the Office of White House Counsel and the Department of Justice. I have had contacts with Department of Justice lawyers concerning the completion of nomination paperwork. My nomination was submitted to the Senate on June 27, 2007.

d. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
OConnor, Reed C	U S District Court -ND Texas	06/28/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge-Nominee	[X] Nomination, Date 06/27/2007 [ ] Initial [ ] Annual [ ] Final 5b. [ ] Amended Report	01/01/2006 to 06/27/2007
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
141 Dirksen Senate Office Bldg Washington DC 20510	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of instructions.)*

[X] NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of instructions.)*

[X] NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting OConnor, Reed C	Date of Report 06/28/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

[X] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			
5.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

[ ] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2006	ExxonMobil Corporation - salary and incentive compensation
2.	2007	ExxonMobil Corporation - salary and incentive compensation
3.		
4.		
5.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

[ ] NONE *(No reportable reimbursements.)*

	SOURCE	DESCRIPTION
1.		Exempt
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting OConnor, Reed C	Date of Report 06/28/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.		Exempt	
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	First National Bank of Hico	Mortgage - Bosque County Texas farm	M
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting OConnor, Reed C	Date of Report 06/28/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bosque County, Texas -farm 2006	F	Rent	N	Q	Exempt				
2. Energy Capital Credit Union 2006	A	Interest	K	T					
3. Vanguard Growth Index Fund 2006	B	Dividend	J	T					
4. Vanguard Equity Income Fund 2006	C	Dividend	K	T					
5. Vanguard Strategic Equity Fund 2006	C	Dividend	K	T					
6. Vanguard Prime Money Market 2006	A	Dividend	J	T					
7. Vanguard Prime Money Market 2006		None	K	T					
8. Vanguard Growth Index Fund 2007	A	Dividend	K	T					
9. Vanguard Equity Income Fund 2007	D	Dividend	K	T					
10. Vanguard Strategic Equity Fund 2007	B	Dividend	K	T					
11. Vanguard Prime Money Market 2007	A	Dividend	J	T					
12. Vanguard Prime Money Market 2007		None	K	T					
13. Bank of America 2006	A	Interest	K	T					
14. Citigroup 2006	C	Interest	N	T					
15. Energy Capital Credit Union 2007	A	Interest	K	T					
16. Bank of America 2007	A	Interest	K	T					
17. Citigroup 2007	D	Interest	N	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
,	05/31/2007

VII. INVESTMENTS and TRUSTS — *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. ExxonMobil restricted stock 2007	A	Dividend	M	T	Exempt				
2. ExxonMobil restricted stock 2006	D	Dividend	N	T					
3. ExxonMobil 1107 shares 2007	A	Dividend	L	T					
4. ExxonMobil 190 shares 2006	A	Dividend	K	T					
5. ExxonMobil 401K 2006	E	Dividend	P1	T					
6. ExxonMobil 401K 2007	C	Dividend	P1	T					
7. Bosque County, Texas farm 2007	A	Rent	N	Q					
8. Security One credit union savings account 2006	A	Interest	J	T					
9. Security One credit union savings account 2007	A	Interest	J	T					
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting OConnor, Reed C	Date of Report 06/28/2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

I have been employed by the United States government since 1998 and therefore am exempt from reporting salary in Part III during the reporting period.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting	Date of Report
	OConnor, Reed C	06/28/2007

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Reed O'Connor Date 6/28/07

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		420	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		93	000	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		5	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		655	000
Real estate owned-add schedule	1	000	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		33	000				
Cash value-life insurance							
Other assets itemize:							
401(k) Retirement account	1	057	000				
TSP account		187	000				
IRA account		78	000	Total liabilities		660	000
				Net Worth	2	208	000
Total Assets	2	868	000	Total liabilities and net worth	2	868	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
XOM	$ 93,000
Real Estate Owned	
Personal residence	$ 650,000
Property in Iredell, Texas	350,000
Total Real Estate Owned	$ 1,000,000
Real Estate Mortgages Payable	
Personal residence	$ 495,000
Property in Iredell, Texas	160,000
Total Mortgages Payable	$ 655,000

AFFIDAVIT

I, Reed O'Connor, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/06/07
(DATE)

Reed O'Connor
(NAME)

Linda S. Thomson
(NOTARY)
ID# 279651

County of Fairfax
Commonwealth of Virginia

I acknowledge this was Signed before me by Reed O'Connor this 6th day of July 2007.

My commission expires January 31, 2011

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Joseph Normand Laplante

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of New Hampshire

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   U.S. Attorney's Office
   53 Pleasant St.,
   Concord, NH, 03301

4. **Birthplace**: State year and place of birth.

   1965; Nashua, NH.

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Carol Ann Fiore, homemaker (attorney, member of NY, NH and MA bars, not currently practicing), 3 dependant children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Georgetown Law; 1987 – 1990; JD (*cum laude*), 1990;
   University of Pennsylvania Law School (visiting student fall 1989); no degree
   Georgetown University, 1983 – 1987; AB (*cum laude*), 1987.

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with

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which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

(2/02 – present) United States Attorney's Office for the District of New Hampshire, 53 Pleasant St., Concord, NH, 03301 (First Assistant U.S. Attorney)

(1/00-1/02) United States Attorney's Office for the District of Massachusetts, Moakley Federal Building, 9th Floor, 1 Courthouse Way, Boston, MA, 02210 (Assistant U.S. Attorney)

(11/98-12/99) U.S. Department of Justice, Criminal Division, Public Integrity Section, 1400 New York Ave., Washington, DC (Trial Attorney)

(9/93-11/98) Office of the Attorney General, State of New Hampshire, 33 Capitol St., Concord, NH, 03301 (Senior Assistant Attorney General)

(9/90-9/93) Wiggin & Nourie, PA, 670 Commercial St., Manchester, NH, 03105 (Associate)

While in law school, I worked part-time for two Washington, DC law firms. Both are defunct, and I can only remember the name of one of them: the Washington, DC Office of a Minneapolis firm: Popham, Haik, Shnobrich & Kaufman, Ltd. My only recollection of the other firm is one of the "name partner's" name "Heggestadt."

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I have not served in the military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Dean's List, freshman, sophomore, junior and senior years, Georgetown University
Alpha Sigma Nu, National Jesuit Honor Society
Spronk Medal, Georgetown University, awarded to senior in College of Arts and Siences "most respected by faculty, students and administration."
Wshington Law Reporter Prize (1990, Georgetown Law)
NH Bar Foundation's *Robert Kirby Award* for lawyer under 35 best exemplifying advocacy, civility, and perspective; selected by panel of state and federal judges (2001)

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Named in *The Manchester Union Leader*'s inaugural "Forty Under 40" feature (February 2002)
NH Congressional Law Enforcement Award (2003)
Lt. Steven P. Demo Law Enforcement Award (2003, NH Drug Task Force)
NH Congressional Law Enforcement Award (2004)
Billy Yout Memorial Award (2005, DEA, New England Narcotic Enforcement Officers' Association)
New England Organized Crime Drug Enforcement Task Force Award (several, 2003-06, for *Operation Bee Sting, Operation Hot Wings, Operation Plymouth Rocks, Operation Big Papa, Operation Pill Pusher*)
Special Achievement Award, Department of Justice (1999)
Special Achievement Award, Department of Justice (2000)

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

NH Bar Association, 1990-present (New Lawyer's Committee (member, approx. 1993-98, chairman, 1996-98), Professionalism Committee, member, 2001-present, chairman, 2004-06)

Nashua Bar Association, 1990-present

American Bar Association, approximately 10 years starting some time in the early 1990's

Webster-Batchelder American Inns of Court (member, approx. 1995-2005, Program Chair, approx. 2003-05)

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New Hampshire, admitted 1990; There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

All New Hampshire State Courts since 1990
U.S. District Court for the District of New Hampshire, 1990
U.S. Court of Appeals for the First Circuit, 1995
U.S. District Court for the District of Columbia, 1999
U.S. Court of Appeals for the DC Circuit, 1999

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It is also possible (although I cannot recall) that I was admitted to two other courts in 1999 (pursuant to work I did on the DOJ Campaign Financing Task Force): the U.S. District Court for the Central District of California and the U.S. Court of Appeals for the Ninth Circuit.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

NH Charitable Foundation, Greater Nashua Regional Board (member since 2004, chair since 2006)

Nashua Police Athletic League (Board of Directors since 1993, chairman 2003-06)

Knights of Columbus Councils ## 122 and 11573 (member since its inception in early 1990's, hold office of council's "Advocate" (advisor))

St. Paul's School, Concord, NH (Advisory Board, Advances Studies Program, since mid 1990's)

Club National (French Canadian social club, Nashua, NH; member 2001-06)

St. Christopher's School (parochial school in my Catholic parish, attended by my children) (Advisory Board since 2002)

United States Amateur Boxing Federation (governs amateur boxing in U.S., member – because I am a boxing referee – since late 1990's)

NH Catholic Lawyer's Guild (2006-07)

Nashua (NH) Rotary Club (member, 1992-93)

Friends of Nashua High School Athletics (1990's)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or

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religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Knights of Columbus admits men only, and the Nashua Rotary Club (a chapter of Rotary International) once admitted only men, but is now open to both men and women.

The Rotary policy had already changed to allow the admission of women when I joined, and I have never taken action to change the Knights' policy (although the Knights organization includes ladies' auxiliaries). The Knights of Columbus has evolved in recent years to function basically as a "parish men's club" in many Catholic parishes in the U.S.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Extended Term Sentencing Under RSA 651:6 After Apprendi v. New Jersey: New Hampshire Bar Journal, Volume 41, #3 (Sept. 2000)

A Roadmap to the Federal Right to Privacy Act, New Hampshire Bar Journal, Vol. 38, #1 (March 1997)

State Government Access to Financial and Credit Records in Criminal and Civil Investigations: A Roadmap to the New Hampshire Right to Financial Privacy Act, New Hampshire Bar Journal, Vo. 36, #1, (March, 1995)

Note: Self Incrimination on Income Tax Returns: A Compelling Dilemma, The Tax Lawyer, Vol. 43 (American Bar Association, Fall 1989)(law student note)

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

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c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have participated in several panel discussions and lectured at several Continuing Legal Education ("CLE") courses offered in New Hampshire over the last 15 years. These were not matters of policy or controversy, but rather were teaching sessions regarding points of law and procedure. I have no copies, transcripts, or tapes.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

As a federal (and even more frequently as a state) prosecutor, I have been questioned (not so much "interviewed") by the media dozens of times regarding the procedural status of specific prosecutions. No complaint of unethical behavior or professional misconduct has ever been made in connection with any statement I have ever provided to the media.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held a judicial office.

15. **Citations**: If you are or have been a judge, please provide:
a. citations for all opinions you have written (including concurrences and dissents);

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b. a list of cases in which certiorari has been requested or granted;

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never been a judge.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have never been a judge.

17. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

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appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

City of Nashua, Ice Rink Commission (nonpartisan, appointed by Nashua ayor Bernard Streeter, 2004-present)

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a paid or unpaid title or position in a political campaign or party. On four or five occasions over the last 17 years, I have stood outside polling places (as a volunteer), holding a sign for a few hours on Election Day, for the following candidates: John Kacavas (successful NH State House of Representatives campaign, unsuccessful NH Executive Counsel campaign); John Stephen (unsuccessful U.S. Congressional campaign); James McGrail (unsuccessful Cambridge, MA City Counsel campaign); Ovide LaMontagne (unsuccessful gubinatorial campaign). All but LaMontagne were either school friends or former fellow prosecutors who were personal friends.

18. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I did not practice alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

(2/02 – present) United States Attorney's Office for the District of New Hampshire, 53 Pleasant St., Concord, NH, 03301 (First Assistant U.S. Attorney)

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(1/00-1/02) United States Attorney's Office for the District of Massachusetts, Moakley Federal Building, 9th Floor, 1 Courthouse Way, Boston, MA, 02210 (Assistant U.S. Attorney)

(11/98-12/99) U.S. Department of Justice, Criminal Division, Public Integrity Section, 1400 New York Ave., Washington, DC (Trial Attorney)

(9/93-11/98) Office of the Attorney General, State of New Hampshire, 33 Capitol St., Concord, NH, 03301 (Senior Assistant Attorney General)

(9/90-9/93) Wiggin & Nourie, PA, 670 Commercial St., Manchester, NH, 03105 (Associate)

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Upon law school graduation in 1990, I passed the New Hampshire Bar Exam the same year and went to work as an associate for the Manchester, NH law firm of Wiggin & Nourie, P.A. (approximately 50 lawyers), where I focused on commercial litigation, with some tort work.

In 1993, I joined the NH Attorney General's Office and was assigned to the White Collar Crime Unit. In 1996, I was assigned to that office's newly formed Homicide Unit, where I worked as lead counsel on several homicide prosecutions, and engaged in a substantial appellate practice before the NH Supreme Court. I was eventually promoted to Senior Assistant Attorney General.

In 1998, I was hired by the Criminal Division (Public Integrity Section) of the U.S. Department of Justice in Washington, DC, and was immediately detailed to the Campaign Financing Task Force.

In 2000, I was hired by the U.S. Attorney's Office for the District of Massachusetts in Boston, where I worked in two sections simultaneously: the Major Crimes Unit and the New England Organized Crime Drug Enforcement Task Force (OCDETF).

In 2002, I joined the U.S. Attorney's Office for the District of New Hampshire in Concord, where I was named Lead OCDETF Attorney. I was promoted to Violent Crime Section Supervisor, and then, in January 2005, to First Assistant U.S. Attorney, my current position in which I oversee the office's Criminal, Civil, and Administrative Divisions.

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ii. your typical clients and the areas, if any, in which you have specialized.

1990-93 – commercial litigation, clients were banks and businesses
1993-95 – white collar crime prosecution, appellate work
1995-98 – homicide prosecution, appellate work
1998-2000 – Federal election law investigation and prosecution
2000-07 – drug trafficking and money laundering conspiracies, weapons charges

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

100% litigation throughout my career, with a measure of U.S. Attorney's Office management in 2005-07.

I have appeared in court frequently and continuously throughout my career.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 50%
   3. other courts. NA

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 20%
   2. criminal proceedings. 80%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 21 cases to conclusion (and several more that settled or "plead out" during trial). Of the 21 that were tried to conclusion, I was lead counsel in 7 of them, sole counsel in 3 of them, co-counsel (an equal partner in which neither counsel was superior or subordinate) in 7 of them, and in the early part of my career, associate counsel in 4 of them.

i. What percentage of these trials were:
   1. jury: 90%
   2. non-jury: 10%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

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I have not practiced before the Supreme Court of the United States.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. James Michael Coyne, Carroll Lane, et al. (114 Fed. Appx. 5 (2004); 142 Fed. Appx. 485) (2005), U.S. District Court, D NH, U.S. District Judge Paul Barbadoro.) Prosecution arising from an Organized Crime Drug Enforcement Task Force investigation, "Operation Hot Wings." Primary evidence was a Title III wiretap, which I applied for and supervised. Coyne and Lane ran a small, white supremacist outlaw motorcycle gang, the Ku Klux Klan Motorcycle Club, which transported high purity "ice" crystal methamphetamine from Arizona to New Hampshire for distribution. They were convicted of drug trafficking and money laundering conspiracies, as well as weapons charges. I was the prosecutor as an AUSA. Defense counsel: Jonathan Saxe (603-226-7360, Federal Defender's Office, 22 Bridge Street, Concord, NH, 03301), and Stanley Norkunas (978-454-7465, 11 Kearney Square, Lowell, MA, 01852) for Coyne, and Jason Lamm, (602-222-9237, 5050 North 8th Place, Ste. 12, Phoenix, AZ, 85014) for Lane.

2. United States v. Phillip Puopulo et al. (2005, U.S. District Court, D NH, docket # 04-67-01, U.S. District Judge Steven J. McAuliffe.) Part of an Organized Crime Drug Enforcement Task Force investigation, "Operation Big Papa." Primary evidence was a Title III wiretap. Puopolo was the leading and best known cocaine trafficker in NH's Lakes Region, and was supplied by a Colombian ring, members of which were prosecuted and convicted. Many defendants were convicted of drug trafficking, money laundering, and weapons charges. I was the prosecutor as an AUSA. Defense counsel: Jonathan Saxe (603-226-7360, Federal Defender's Office, 22 Bridge Street, Concord, NH, 03301).

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3. State of NH v. Seth Bader. (148 N.H. 265, 808 A.2d 12 (2002), Rockingham County Superior Court, Judge Walter Murphy) (this was the appeal from the trial I handled.) Prosecution for first degree murder and conspiracy to commit murder. Defendant convicted. I was the prosecutor as a NH Asst. A.G. Defense counsel: Mark Sisti (603-224-4220, 387 Dover Road, Chichester, NH, 03258). A Brooklyn attorney relocated to NH and murdered his ex-wife to avoid paying child support, involving his adolescent son and others in the murder plot.

4. United States v. Randy Noe, Victor Mendes, James Costello, et al. (2007, U.S. District Court, D NH, docket # 05-245-01, U.S. District Judge Joseph DiClerico.) Part of an Organized Crime Drug Enforcement Task Force investigation, "Operation Pill Pusher." Primary evidence was a Title III wiretap, as well as complex "historical" analysis of financial and medical records and innovative use of search warrants with respect to FedEx packages. Noe organized a Florida-to-New England oxycodone trafficking and money laundering ring. Many co-defendants were convicted of drug trafficking and money laundering charges. I was the prosecutor as an AUSA. Defense counsel: William Cintollo (617-439-7775, One International Place, Suite 1820, Fort Hill Square, Boston, MA, 02110).

5. State of NH v. Gerald Gotsch. (143 N.H. 88, 719 A.2d 606 (1998), Rockingham County Superior Court, Judge Kenneth McCue.) Prosecution for second degree murder with a strong insanity defense. Londonderry with serious mental health issues murdered his father and fled the jurisdiction. Defendant convicted. I was the lead prosecutor. Substantial suppression litigation over the defendant's inculpatory *Mirandized* statements. Defense counsel: Andrew Schulman (603-634-4300, 3 Executive Park, Bedford, NH, 03110). A Londonderry man with substantial mental health issues murdered his father and fled the jurisdiction.

6. State of NH v. Raymond Davis. (143 N.H. 8, 718 A.2d 1202 (1998), Rockingham County Superior Court, Judge James Barry). Prosecution for Theft by Misapplication of Property involving the defendant's clandestine misappropriation of funds from the state government-backed Hampton Economic Development Corporation through a scheme to finance country western concerts. Novel use of NH theft statute involving guarantees. Defendant convicted. I was lead prosecutor. Defense counsel: Bernard Robertson (603-659-2171, 15 Moonlight Drive, Newmarket, NH, 03857).

7. State of NH v. Troy Hammond. (144 N.H. 401, 761 A2d 1026 (1999), Grafton County Superior Court, NH Supreme Court Justice (then Superior Court Judge) Richard Galway). Prosecution for second degree murder and assault of an infant child involving "Shaken Baby Syndrome." Substantial suppression litigation over defendant's confession, as well as expert

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testimony regarding "Shaken Baby Syndrome." Defendant convicted. I was the lead prosecutor. Defense counsel: Attorney (now Judge) Gerard Boyle (603-271-6400, Concord District Court, 32 Clinton Street, Concord, NH, 03302).

8. United States v. Bruce Belton. (414 F. Supp. 2d (2006), U.S. District Judge Joseph DiClerico). Methamphetamine trafficking and weapons prosecution against member of Freelancers Outlaw Motorcycle Gang. Defendant convicted. I was the sole prosecutor. Significant suppression litigation, with reported decision involving "good faith exception" to Fourth Amendment exclusionary rule. Defense counsel: Paul Garrity (603-434-4106, 14 Londonderry Road, Londonderry, NH, 03053).

9. United States v. Shawn Garner. (338 F.3d 78 (2003), Judge Patricia Saris, U.S. District Court, Boston, MA) (this is the appeal from the trial I handled). Prosecution for crack cocaine distribution and weapons charges. Defendant convicted. I was the prosecutor as an AUSA. Substantial 5th Amendment suppression litigation over the defendant's inculpatory statements, and 4th Amendment litigation over the evidence seized from the defendant's girlfriend's home and common areas of her apartment building. Defense counsel: Randy Gioia (617-367-2480, 151 Merrimac Street, Boston, MA, 02114).

10. State of NH v. Richard Cromlish. (146 N.H. 277, 780 A.2d 486 (2001), Hillsborough County Superior Court, NH Chief Superior Court Judge Robert Lynn). Prosecution of a Manchester, NH taxi driver who fatally shot his fare, a much larger man, based on a claim of self defense. Defendant convicted. I was the lead prosecutor. Defense counsel: Stephen Bennett, (603-589-3250, Nashua City Hall, Nashua, NH 03060).

20. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have been very active in bar-related and other professional activities throughout my career. As a private practice attorney, I handled pro bono litigation for indigent clients.

During the 90's, I served on the N.H. Bar Association's New Lawyer's Committee, eventually serving as its chair for two terms. In that capacity, I either initiated or administered several programs providing mentoring, linking, activities, or publications for newly admitted members of the bar. After returning to New England from

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Washington DC in 2000, I joined (and still sit on) the N.H. Bar Association's Professionalism Committee, again eventually serving as its chair for two terms. In that capacity, I either initiated or administered programs to promote ethical behavior, civility, or high professional standards for members of the bar. I helped found the N.H. Bar Association's highly successful "Statewide Professionalism Day" event, which involves a single-day statewide closure of all of New Hampshire's courthouses, to allow all lawyers to attend presentations and group discussions at New Hampshire's 11 Superior Courthouses.

I was a long time member of the Daniel Webster Inns of Court, and a founding member of the William Batchelder Inns of Court. (The two entities eventually merged to form the Webster-Batchelder Inns of Court.) I served two terms as its Program Chair, organizing and coordinating it monthly presentations on trial advocacy, ethics, and professionalism.

I have utilized my legal abilities and experience in several capacities when asked to assist with the drafting of codes of conduct, agreements, and recommendations and the like (as a volunteer) for entities such as the City of Nashua, NH (for its Ice Rink Commission, its Ad Hoc Committee on Parks and Recreation, or the Nashua School District's Commission to Implement a Code of Conduct for Student Athletes) or the Catholic Diocese of Manchester, NH (for St. Christopher School, the Diocesan Athletic Board, and the Parish Clustering Commission Task Force). I have also performed similar tasks in my role as "Council Advocate" for the local Knights of Columbus.

I have never worked or acted as a lobbyist.

21. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

    My teaching experience as an attorney is comprised of short lectures for Continuing Legal Education ("CLE") courses for the New Hampshire Bar Association or other CLE providers on various topics.

    During law school, as part of a clinical course, I taught a course called "Street Law" to inmates at the District of Columbia's Lorton Reformatory. My co-instructor was (then law student) David Berthiaume, Esq., (202-401-3690, Office of the General Counsel, U.S. Dept. of Education, 600 Independence Ave. SW, Washington, DC 20202-0002).

22. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the

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future for any financial or business interest.

I have none, other than federal employee retirement benefits and the federal employees' Thrift Savings Plan.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

25. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service, would include cases and files that were open in the U.S. Attorney's Office for the District of New Hampshire during the time I worked there.

I would address these conflicts by inquiring of my current employer, the U.S. Attorney's Office, with respect to all cases assigned to me as a judge, whether the file in the matter was opened during the time I was employed in the office. In any conflict, I will follow established procedures, guidelines, and relevant statutes.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will resolve any potential conflict of interest by following 28 U.S.C. §455 and

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Canon 3(C) of the Code of Conduct for United States Judges, which govern judicial recusal. I will maintain, through both the Clerk of Courts and my chambers, a recusal list that includes entities in which I have a financial interest or other conflict. I will implement a procedure to update the list regularly.

27. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

When I was in private practice (1990-93), I represented indigent clients *pro bono* in several criminal and domestic relations cases assigned to me by the NH Bar Association ("NHBA"). I would estimate that each of these cases involved between 15-30 hours of work.

During that time, I also represented many other individuals in criminal, domestic or business matters at no charge. These individuals approached me personally, as opposed to being referred from the Bar Association. Some were indigent; others were simply people who I knew could not afford legal representation.

When I became a prosecutor (1993-present), I was no longer permitted to represent individuals in court. I chaired two committees of the NH Bar Association (the New Lawyers Committee and the Professionalism Committee), and in that capacity organized my committees to participate (and participated myself) in several of NHBA's "*Pro Bono* Referral Marathons." Each "marathon" involved between three and six hours of work on a phone bank telephoning lawyers to obtain their agreement to accept *pro bono* referrals.

28. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In January 2007, I received a phone call from a member of the New Hampshire legal community who asked me if I had submitted my name for consideration to be nominated to the seat on the U.S. District Court which would be vacant when District Judge DiClerico assumed "senior status." I replied that I had not, and that I thought the process had been ongoing for many months and was likely effective complete.

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The caller told me it had been ongoing for months, but that if I was interested, I should send a resume or *curriculum vitae*. I sent a CV to the caller.

On February 3, 2007, I was contacted (separately) by both the White House Counsel's office and a representative of Senator Judd Gregg's office, and informed that I was one of three names submitted to the White House by Senator Gregg for consideration for a nomination to the U.S. District Court. On March 6, I was interviewed by the White House Counsel's Office. On April 13, 2007, I was notified that the president had "preliminarily" decided to nominate me to the U.S. District Court. The same day, I was contacted by the Department of Justice regarding the completion of the nomination paperwork. My nomination was submitted to the Senate on June 13, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Laplante, Joseph N	US District Court, D NH	06/15/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
US Dist. Judge Nominee, Active	☒ Nomination, Date 06/13/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2006 to 05/31/2007
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
US Attorney's Office 53 Pleasant St. Concord, NH 03301	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Director	Nashua Police Athletic League (nonprofit)
2.	
3.	
4.	
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of Instructions.)*

☒ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting	Date of Report
	Laplante, Joseph N	06/15/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

[X] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			
5.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

[X] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		
5.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

[ ] NONE *(No reportable reimbursements.)*

	SOURCE	DESCRIPTION
1.	Exempt.	
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Laplante, Joseph N	Date of Report 06/15/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1. Exempt.			
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Laplante, Joseph N	Date of Report 06/15/2007

VII. INVESTMENTS and TRUSTS -- *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Sovereign Bank	A	Interest	K	T	Exempt				
2. Northeast Credit Union	A	Interest	J	T					
3. JT WROS American Funds Account #59832962									
4. --Europacific Growth Fund A	A	Dividend	J	T					
5. -- New Perspective Fund A	A	Dividend	J	T					
6. -- Investment Company of America A	B	Dividend	L	T					
7. -- Washingtorn Mutual Investors Fund A	A	Dividend	J	T					
8. -- Cash Management Trust of America	A	Interest	J	T					
9. IRA --American Funds Account # 61356385									
10. -- EuroPacific Growth Fund A		None	K	T					
11. -- New Perpective Fund A		None	K	T					
12. -- Washinton Mutual Investors Fund		None	K	T					
13. IRA -- Washinton Mutual Investors Fund A # 64606390	A	Dividend	K	T					
14. Roth IRA American Funds Account # 63927008									
15. -- Europacific Growth Fund A		None	J	T					
16. -- The Growth Fund of America A		None	J	T					
17. -- New Perspective Fund A		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Laplante, Joseph N	06/15/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. -- SMALLCAP World Fund A		None	J	T					
19. -- Fundamental Investors A	A	Dividend	J	T					
20. -- Washington Mutual Investors Fund A	A	Dividend	J	T					
21. -- The Income Fund of America A	A	Dividend	J	T					
22. 3 identical Coverdell ESAs (for my 3 children; aggr figures)									
23. -- Europacific Growth Fund A		None	J	T					
24. -- The Growth Fund of America A		None	J	T					
25. -- SMALLCAP World Fund A		None	J	T					
26. -- Washington Mutual Investors Fund A	A	Dividend	J	T					
27. -- The Income Fund of AMerica A	A	Distribution	J	T					
28. 3 identical 529 plans (for my 3 children; aggr. figures)									
29. -- EuroPacific Growth Fund A		None	K	T					
30. -- The Growth Fund of America A		None	K	T					
31. -- New World Fund A		None	J	T					
32. -- SMALLCAP World Fund A		None	K	T					
33. -- Washington Mutual Investors Fund A	A	Dividend	K	T					
34. -- The Income Fund of America	A	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 6 of 8	Name of Person Reporting Laplante, Joseph N	Date of Report 06/15/2007

VII. INVESTMENTS and TRUSTS -- *Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. 1983 Georgetown Investments, LLC		None	J	W					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Laplante, Joseph N	Date of Report 06/15/2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Part III.A. - Salary from U.S. Government was received during the reporting period.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Laplante, Joseph N	Date of Report 06/15/2007

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Joe Laplante **Date** 6/15/07

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		25	225	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		341	953	Notes payable to relatives			
Unlisted securities--add schedule		5	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		71	917
Real estate owned-add schedule		650	400	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		15	000				
Cash value-life insurance							
Other assets itemize:							
IRAs		117	002				
Thrift Savings Account		138	746				
				Total liabilities		71	917
				Net Worth	1	221	409
Total Assets	1	293	326	Total liabilities and net worth	1	293	326
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
EuroPacific Growth Fund	$ 65,041
The Growth Fund of America	54,999
New World Fund	6,992
SMALLCAP World Fund	26,212
Washington Mutual Investors Fund	57,552
The Income Fund of America	70,118
The Investment Company of America	54,856
New Perspective Fund	6,183
Total Listed Securities	$ 341,953
Unlisted Securities	
1983 Georgetown Investments, LLC	$ 5,000
Real Estate Owned	
Personal residence	$ 650,400
Real Estate Mortgages Payable	
Personal residence	$ 71,917

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AFFIDAVIT

I, Joseph N. Laplante, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/15/07
(DATE)

(NAME)

Warren D. Haggerty
(NOTARY)

WARREN D. HAGGERTY Notary Public
My Commission Expires April 6, 2010

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Thomas David Schroeder
   (also known as Tom Schroeder or, as a child, Tommy Schroeder)

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Middle District of North Carolina

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Womble Carlyle Sandridge & Rice, PLLC
   One West Fourth Street
   Winston-Salem, NC 27101

4. **Birthplace**: State date and place of birth.

   1959; Atlanta, Georgia.

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married to Katherine Elizabeth (Mims) Schroeder.
   Attorney, presently full-time housewife/mother.
   Two dependent children

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   University of Notre Dame Law School (1981-84) (J.D., May 1984)

   Kansas University (1978-81) (B.S. Business Administration, May 1981)

   University of Cincinnati College Conservatory of Music (1977-78, no degree granted)

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7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Womble Carlyle Sandridge & Rice, PLLC (1985 to present)
1 West 4th Street, Winston-Salem, NC 27101
Member (Partner) (1991-present)
Associate (1985-1991)
Summer Associate (June-August 1983, June-July 1984)

FirmLogic LLC (litigation support company wholly owned by Womble Carlyle)
102 W. 3rd St., Winston-Salem, NC 27101
Member, Board of Directors (March 2006 to present)

FirmLogic International LLC (litigation support company wholly owned by Womble Carlyle to do business outside the United States)
102 W. 3rd St., Winston-Salem, NC 27101
Member, Board of Directors (June 2006 to present)

North Carolina Association of Defense Attorneys
PO Box 4830, Cary, NC 27519
Member, Board of Directors (1997-1999); Secretary (1999-2001)

United States Court of Appeals for the District of Columbia Circuit
United States Courthouse, Washington, DC 20001
Judicial Law Clerk, Honorable George E. MacKinnon (1984-85 Term)

Hunton & Williams, LLP
1900 K St., NW, Washington, DC 20006
Summer Associate (August 1984)

Notre Dame Law School
Notre Dame, IN 46556
Research Assistant, Prof. J. Eric Smithburn (1982 – 1984)

Alexander & Hinshaw (now Charles J. Alexander, II law office)
3890 Vest Mill Rd., Winston-Salem, NC
Summer Associate (June-August, 1982)

Union Equity Cooperative Exchange
Enid, OK
Wheat harvest, scale operator and general labor (May-August 1981)

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8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

   None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Listed in "Best Lawyers in America" (2006, 2007)

   Listed as "North Carolina Super Lawyer" (2006, 2007)

   AV rated by Martindale Hubbell

   Faculty, International Association of Defense Counsel National Trial Academy (2007)

   Editor in Chief, Notre Dame Law Review (1983-84); Staff Member (1982-83)

   Law Scholarship, Notre Dame Law School (1982-83, 1983-84)

   Am. Jur. Award (Top Paper), Contracts (First Semester)

   Research Assistant, Professor J. Eric Smithburn (Evidence and Trial Practice), Notre Dame Law School

   1st Year Moot Court, Second Speaker Award

   Full Tuition Scholarship, University of Cincinnati College Conservatory of Music (1977-78)

   Accepted into Grace Pearson Scholarship Hall, Kansas University (1978-81) (Hall Proctor, 1980-81)

   Marietta Jackson Scholarship, Kansas University (1981)

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

    North Carolina Bar Association, including Litigation Section (approximately 1985 to present)

    North Carolina State Bar (mandatory bar)(1984 to present)

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N.C. Board of Law Examiners
Member, Select Drafting Committee (approximately 1988-1997)

American Bar Association, including Litigation Section (approximately 1985-2000)

Forsyth County and 21st Judicial District Bar Associations (approximately 1985 to present)

Member, International Association of Defense Counsel (2005 to present)
Faculty, National Trial Academy (Stanford Law School, Summer 2007)

Member, Defense Research Institute (1995 to present)

Member, North Carolina Association of Defense Attorneys (1990 to present)(Board of Directors 1997-1999; Secretary 1999-2001)

Associate Member, Association of Trial Lawyers of America (1996 to present)

Member, Joseph Branch Inn of Court (1999-2001)

Member, Phi Alpha Delta Legal Fraternity (1981 to present)
State Coordinator of Law Related Education Committee (approximately 1986-91)

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

North Carolina (1984). No lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

North Carolina State courts, 1985

Supreme Court of the United States, 1995

United States Court of Appeals for the District of Columbia Circuit, 1985

United States Court of Appeals for the Fourth Circuit, 1986

United States Court of Appeals for the Eleventh Circuit, 2000

United States District Court for the Middle District of North Carolina, 1986

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United States District Court for the Eastern District of North Carolina, 1992

United States District Court for the Western District of North Carolina, 2001

Admitted Pro Hac Vice in several courts, including: United States District Courts for the Eastern District of New York, Southern District of Alabama, District of Minnesota & Southern District of Illinois; state courts including California (San Francisco, Los Angeles and San Diego Counties), Florida (Hillsborough County), West Virginia (Ohio County), Utah (Salt Lake), Kentucky (Franklin County), & Oregon (Portland).

No lapses in admission.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Mountain Air Country Club (Burnsville, NC) (approximately 1999 to present)

Bermuda Run Country Club (Bermuda Run, NC) (2004 to present)

Westwood Pool and Tennis Club (Winston-Salem, NC) (approximately 1998 to present)

YMCA (Winston-Salem, NC) (approximately 1976-77, 1985-90)(formerly active in its Partnership with Youth campaigns)

Kansas University Alumni Association (Lawrence, Kansas) (approximately mid-1990s to present)

St. Thomas More Society, Notre Dame Law School (2006 to present)

Giannini Society, N.C. School of the Arts (Winston-Salem, NC)(2005 to present)

Attend St. Paul's Episcopal Church, Winston-Salem, N.C. (1989 to present)

Attend Our Lady of Fatima & St. Leo's Catholic Churches (1985-present)

Forsyth Court Volunteers (Winston-Salem, NC)(approximately 1985-86)(worked with first offender youths to avoid recidivism)

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FIRST (proposed drug and alcohol re-education/rehabilitation facility)
Member, Policy Committee (approximately 1991)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No, none currently or formerly discriminates on these bases to the best of my knowledge.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Note, Workers' Compensation: Expanding the Intentional Tort Exception to Include Willful, Wanton, and Reckless Employer Misconduct, 58 Notre Dame Law Review 890 (1983)

Recent Decisions: R. Curato, K. Plifka, T. Schroeder, Evidence: Hypnotically Enhanced Testimony – A Question of Admissibility or Credibility for Criminal Courts?, 58 Notre Dame Law Review 101 (1982)

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

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d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

Presentation: "Protecting Your Client's Assets: Pre-Litigation Planning and Litigation Concerns," North Carolina Association of Defense Attorneys Annual Seminar, Hilton Head, SC (April 19, 1996)

Presentation: Daubert: "The Court as Gatekeeper Against the Admission of Unreliable Expert Testimony," North Carolina Association of Defense Attorneys Annual Seminar, Hilton Head, SC (April 29, 1995)

Presentation: "Selected Legal Issues Related to Health Care Plans -- Subrogation Under ERISA," Carolina Claims Association Seminar, Charlotte, NC (April 5, 1991)

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

January 1986 (approximate) interview to Winston-Salem Journal on participation in the Forsyth Court Volunteers program working with youthful first offenders.

December 1994 (approximate) interview to N.C. Lawyers Weekly on appellate decision affirming ruling.

May 2003 (approximate) interview to North Carolina Magazine featuring lawyers representing the business community in North Carolina.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

15. **Citations**: If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

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b. a list of cases in which certiorari has been requested or granted;

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never served as a judge.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have never served as judge.

17. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

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appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held public office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In the Fall of 2004, I served as one of several volunteer N.C. counsel for the Bush/Cheney Presidential campaign in case of ballot challenges/issues in our county. None arose. I also helped raise funds for the Bush/Cheney 2004 re-election campaign in Winston-Salem.

18. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a Law Clerk to the Honorable George E. MacKinnon, United States Court of Appeals for the District of Columbia Circuit (1984-85 Term)

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Womble Carlyle Sandridge & Rice, PLLC
One West Fourth Street
Winston-Salem, NC 27101
Member (Partner) (1991-present); Associate (1985-1991);
Summer Associate, (May-July 1984)
Vice Chairman, Firm Management Committee (2005)
Member of Firm Management Committee (1996-2005)
Practice Group Leader, Products Liability Practice Group (1994 to 2002)

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Member of various internal committees (e.g, recruiting, sexual harassment prevention, operations (finance))

FirmLogic LLC (litigation support company wholly owned by Womble Carlyle)
102 W. 3rd St., Winston-Salem, NC 27101
Member, Board of Directors (March 2006 to present)

FirmLogic International LLC (litigation support company wholly owned by Womble Carlyle to conduct litigation support assistance outside the United States)
102 W. 3rd St., Winston-Salem, NC 27101
Member, Board of Directors (June 2006 to present)

Hunton & Williams, LLP
1900 K St., NW, Washington, DC 20006
Summer Associate (August 1984)

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1984-85, I served as a judicial law clerk to a federal circuit judge on the District of Columbia Circuit. From 1985 to 1991, I was an associate with my current law firm, Womble Carlyle, and conducted legal research, drafted briefs, participated in discovery, argued motions and hearings, and participated in some trials. As a partner starting in 1991, I took on more lead responsibility for commercial litigation and product liability litigation. Over the course of my career, I have represented a wide variety of clients (businesses and individuals) in the courts in North Carolina, largely on commercial litigation and product liability matters. For several years, I have represented clients in litigation brought against them in several states, appearing in mediations and in courts.

In the mid-1990s, I became more involved in our firm management, including serving on our 9 member elected management committee for 10 years (re-elected every 2 years) and as Practice Group Leader of the Product Liability Practice Group (then the firm's largest) from 1994-2002.

ii. your typical clients and the areas, if any, in which you have specialized.

My practice has been in general litigation and trial work, product liability and mass tort. My work has been predominantly for clients who are

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defendants, but I have also represented clients as plaintiffs. I have represented publicly and privately held corporations of various sizes and individuals in litigation in federal and state courts in North Carolina. Such matters include contract, warranty, negligence/tort, and state and federal statutory claims. In addition to manufacturers, such clients have included owners of small businesses, a physician in a break up of a medical practice, a mother who lost her son in an automobile accident, an individual in a lawsuit suit involving his home, and a business owner in a fraud case. I have also represented national manufacturers in litigation in my home state of North Carolina and in several jurisdictions across the country. These companies have included manufacturers of children's toys, school buses, pharmaceuticals, propane valves and equipment, and tobacco products. Several years ago, I advised clients on commercial promotions related to sweepstakes and give-aways, to comply with existing law.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice is exclusively in litigation. As an associate from 1985 to 1991, I argued occasional dispositive and discovery motions and participated in some trials. Since 1991, my appearances have varied from approximately a half dozen to an average of a dozen (and sometimes more) times a year.

i. Indicate the percentage of your practice in:
   1. federal courts; 60%
   2. state courts of record; 40%
   3. other courts.

ii. Indicate the percentage of your practice in:
   1. civil proceedings; 100%
   2. criminal proceedings.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried six cases to verdict or judgment; one as sole counsel, two as lead counsel, and three as co-counsel.

i. What percentage of these trials were:
   1. jury; 90%
   2. non-jury. 10%

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e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1) *Falise v. American Tobacco Co. et al*, Case No. 99-7392, Eastern District of New York (Honorable Jack Weinstein) [1999-2001]:

I served as lead trial counsel to R.J. Reynolds Tobacco Company in defending an action brought by the Johns-Manville Personal Injury Settlement Trust, a resulting trust formed under 11 U.S.C. 524(g) to pay the claims for personal injury made against the bankrupt Johns-Manville asbestos company. The Trust sought reimbursement from the leading domestic tobacco companies for settlements the Trust paid out since 1986 and projected into the future to hundreds of thousands of persons claiming personal injury from Manville's asbestos products. The Trust estimated, through statistical modeling, that its damages totaled several billion dollars, and sought treble and punitive damages as well. The case involved complex legal and factual issues under claims of fraud, federal RICO, failure to warn, and state business code violations. The case was initially dismissed as lacking appropriate subject matter jurisdiction following a hearing based on legal analysis my firm developed and which I argued. *Falise v. American Tobacco Co.*, 241 Bankr. 48 (E.D.N.Y. 1999), *appeal dismissed*, 229 F.3d 1135 (2d Cir. 2000). The case was re-filed under new theories and ultimately tried to a jury over seven weeks. After approximately five days of deliberations, Judge Weinstein declared a mistrial (the jury reported it was hung 10 to 2 in favor of my client and the other defendants). The Trust ultimately voluntarily dismissed the case with prejudice in July 2001.

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Co-counsel for R.J. Reynolds Tobacco Company: Alan Kraus, Latham & Watkins, One Newark Center 16th Flr., Newark, NJ, 07101 (973-639-7293); co-counsel for Philip Morris: George Lombardi, Winston & Strawn, Chicago, Illinois (312) 558-5600; co-counsel for Brown & Williamson Tobacco Corporation: David M. Bernick, Kirkland & Ellis, Chicago, Illinois, 60601, (312) 861-2248.

Plaintiffs' counsel: James L. Stengel, Orrick Herrington & Sutcliff, New York, NY, (212 506-3775); Edward Westbrook, Richardson Patrick Westbrook & Brickman, LLC, Charleston, SC, (843) 727-6500.

2) *Garson Rice v. Herb Parks et al.*, Case No. 90 CVS 5300, Superior Court of North Carolina, Guilford County (Hon. Melzer "Pat" Morgan)[1990-1993]:

I served as co-trial counsel with partner Keith Vaughan in representing Garson Rice, a Greensboro, North Carolina, businessman who formed a partnership with defendant Herb Parks to invest in certain business ventures. Plaintiff claimed that the defendant defrauded him out of more than $10 million to engage in a failed attempt to take over Southmark Corporation, a Dallas, Texas-based Real Estate Investment Trust. Plaintiff sought recovery under theories of fraud, breach of fiduciary duty, conversion, constructive trusts, unfair and deceptive trade practices, and unjust enrichment. Defendant was represented by William Osteen, Sr., (who I believe was confirmed by the U.S. Senate for his U.S. District Court judgeship during our trial). After a six week trial, thirty-five interrogatories were submitted to the jury, which returned a verdict that, with trebled damages, awarded our client more than $15.3 million and was what I believe was the largest reported verdict in the State of North Carolina in 1991. I helped develop the strategy, interviewed and prepared the witnesses, reviewed thousands of pages of documents, drafted all the motions and two trial briefs, handled various trial motions, examined and cross-examined witnesses, handled the all day jury charge conference, and argued post trial motions. The verdict was affirmed on all grounds on appeal based on an appellate brief I drafted. *Rice v. Parks*, 113 N.C. App. 202, 438 S.E.2d 759 (1993).

Co-counsel: Keith W. Vaughan, Womble Carlyle, One West Fourth St, Winston-Salem, NC 27101 (336-721-3540)

Plaintiff's counsel: William Osteen, Sr. (now federal judge, M.D.N.C.).

3) *Gerber Baby Products Company v. Fisher Tank Company*, Case No. 86-3039, 833 F. 2d 505 (4th Cir. 1987)[1986-1987]:

My firm and I were retained to evaluate and handle an appeal for Fisher Tank Company after Judge David B. Sentelle (W.D.N.C.) entered judgment (following jury verdict) against it. The case involved a claim of breach of contract for the construction of a processing tank for baby food at the Gerber facility in Western North Carolina. I developed the appellate theory, drafted the brief, and made the

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argument to the Fourth Circuit, which reversed the trial court's ruling including the award of prejudgment interest and awarded my client full indemnification of several hundred thousand dollars.

Co-counsel on brief: S. Fraley Bost, Womble Carlyle, One West Fourth St., Winston-Salem, NC 27101 (336-721-3549)

Opposing counsel: Hatcher Kincheloe, Jr. & John Morris, Hedrick Eatman Gardner & Kincheloe, 6000 Fairview Road, Ste. 1000, Charlotte, NC 28210 (704 366-1011).

4) *In re Lane*, Case No. B-82-02017-C11 (M.D.N.C. 1991) (Bullock, J.), *aff'd*, 991 F.2d 105 (4th Cir. 1993); and related case: Lane Processing Trust v. Clift C. Lane, Civil Action No. 2:91cv160 (M.D.N.C. 1991) (Beaty, J.) (Consent Judgment 1995) [1991-1995]:

In re Lane was an appeal from a bankruptcy proceeding involving the Lanes and their 19 substantively consolidated companies, where one of the individual debtors (Clift C. Lane) and his counsel raised frivolous arguments (on issues previously resolved by prior litigation) involving the court-appointed trustees and their counsel. I researched and drafted the all the pleadings and briefs. The District Court (Judge Bullock) affirmed application of *res judicata* and *collateral estoppel* to the prior claims, dismissed them, and awarded sanctions in favor of our clients. The Fourth Circuit affirmed. I developed the legal arguments and drafted the briefing in the federal trial court and 4th Circuit. In the related matter, our clients from the bankruptcy proceeding (The Lane Processing Trustees and their counsel) sued the debtor (Clift C. Lane) and his counsel for malicious prosecution and libel for their continued assertion of false statements about the handling of the bankruptcy proceedings. The District Court (Beaty, J.) entered a Consent Judgment barring Mr. Lane and his counsel from making such false statements and filing any further frivolous lawsuits, and awarding payment of $250,000 to our clients.

Co-counsel: Keith W. Vaughan, Womble Carlyle, One West Fourth St, Winston-Salem, NC 27101 (336-721-3540)

Defendant's counsel in related case (malicious prosecution and libel action): Norman B. Smith, & Seth Cohen, 101 S. Elm St., Greensboro, NC, 27401 (336 274-2992).

5) *Carolina Coupon Clearing, Inc. v. Shore*, 124 N.C. App. 228, 477 S.E.2d 95 (unreported slip opinion), *appeal dismissed*, 468 S.E.2d 777 (1996)[approximately 1996]:

I represented Carolina Coupon Clearing, Inc., then the nation's largest "cents-off" coupon (as found in the Sunday newspapers) redemption agencies in protecting its

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proprietary manufacturing and redemption techniques and enforcing a covenant not to compete against a former employee who left the company and attempted to take those practices to a competitor. Following an evidentiary hearing with witnesses in Forsyth County Superior Court (Freeman, Judge) that I presented, the trial court entered injunctive relief in my client's favor, and the N.C. Court of Appeals affirmed. I drafted the briefs in both courts.

Defendant's counsel: G. Gray Wilson, 110 Oakwood Dr., Winston-Salem, NC (336 631-8866).

6) *Hartman v. W. H. Odell and Associates, Inc.*, 117 N.C. App. 307, 450 S.E.2d 912, *review denied*, 339 N.C. 612, 454 S.E.2d 251(1995)[approximately 1995]:

I was retained to represent Mr. Hartman, an actuary, following an adverse jury verdict in a case seeking to enforce a covenant not to compete against him. I researched and argued the post-trial motion for judgment notwithstanding the verdict (Beaty, Judge – now federal judge in M.D.N.C.). The trial court set aside the verdict and invalidated the covenant. I briefed and argued the appeal in the N.C. Court of Appeals, which affirmed.

Plaintiff's counsel: Peter Juran, Blanco Tackabery Combs & Matamoros, 110 S. Stratford Rd., Winston-Salem, NC 27114 (336 293-9000).

7) *Tillman v. R.J. Reynolds Tobacco Co.*, 253 F.3d 1302 (11th Cir. 2001), *vacated on remand*, 340 F.3d 1277 (11th Cir. 2003)(on certified question), and *Tillman v. R.J. Reynolds Tobacco Co.*, 2003 WL 21489707 (Alabama S. Ct. 2003)[approximately 2001-2004]:

I represented R.J. Reynolds as lead counsel in a personal injury action removed from Alabama state court (Mobile, Alabama) to federal court (Hand, Judge) on grounds that plaintiffs had fraudulently joined retailer and individual defendants. The 11th Circuit affirmed in part and certified certain questions to the Alabama Supreme Court. The Alabama Supreme Court held that, as a matter of law, cigarettes were not "unreasonably dangerous" under Alabama law but decided the certified questions on fraudulent joinder so as to leave open a fact issue on that point. Based on the Alabama Supreme Court's decision, the 11th Circuit directed that the case be remanded to state court. Because the courts had so limited the claims, on March 24, 2006, the trial court granted summary judgment and dismissed the case.

Co-counsel: William Brooks and Sam Franklin, Lightfoot Franklin & White, The Clark Building, 400 20th St. North, Birmingham, Alabama, 35203 (205 581-0700).

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Plaintiff's counsel: R. Graham Esdale, Jr., Beasley Allen Crow Methvin Portis & Miles, 218 Commerce St., Montgomery, Alabama 36104 (334 2692343).

8) *Mark Nelson, M.D. v. Henry Burnett, M.D.*, Case No. 97 CVS 7434(Forsyth County, NC)(Melzer "Pat" Morgan, Judge)(1997)[1997-1998].

I represented an ophthalmologist who performs, among other things, macular hole surgery, as defendant in a case where his former partner fired him and then sued him for attempting to continue to treat his patients. After a full day evidentiary hearing, the trial court invalidated the covenant not to compete sought to be enforced against my client.

Plaintiff's counsel: W. Randolph Loftis, Jr., Constangy Brooks & Smith, LLC, 100 N. Cherry St., Ste. 300, Winston-Salem, NC 27101(336 721-1001).

9) *Remington Arms Company, Inc. v. Smokey Mountain Chew, Inc.* Civil Action No. 1:91CV 01227 (M.D.N.C.) [1997-1998].

I represented Remington as plaintiff to recover $300,000 owed it under a contract for placement of the out of state defendant's business logo on the NASCAR race car sponsored by Remington. I handled all aspects of the case, including drafting the pleadings, discovery, motions, depositions and successful resolution of the case.

Defendant's counsel: Guy Driver (now deceased) & Kimilia Wooten, Ogletree Deakins Nash Smoak & Stewart, Winston-Salem, NC (336) 375-9737.

10) *Coleman v. City of Winston-Salem et al.*, Civil Action No. 87 CVS 5488, (Forsyth County Superior Court 1989) (William H. Freeman, Judge)[1989]

Defended the City of Winston-Salem and an employee in a negligence case involving a 14 year-old mentally handicapped student hit by an automobile near a crosswalk. The case was tried to a jury over the course of a week. The jury returned a verdict in our clients' favor, finding that neither the City nor the crossing guard were negligent. I prepared the trial brief, examined and cross-examined witnesses, argued the directed verdict motion, and gave a closing argument.

Co-counsel: Allan R. Gitter, Womble Carlyle, Winston-Salem, NC (336) 721-3615.

Plaintiff's counsel: Mark Rabil, (now with Capital Defenders Office, Winston-Salem, NC (336) 761-2503 ext. 301).

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20. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have worked with and against lawyers from, and litigated and appeared in state and/or federal courtrooms in, multiple states, from California, Oregon and Utah, to Texas, Alabama and Florida, to West Virginia, North Carolina and New York. My practice has for several years involved managing the litigation nationally for clients. This has included analyzing legal issues under the diverse tort and statutory schemes of multiple states, each with its own form of fault (e.g., pure comparative, modified comparative, contributory negligence). I have also represented clients in alternative dispute resolution methods in multiple court-ordered mediations in several states.

I have prepared large cases for trial, which have involved extensive strategic development (including application of the tort schemes of multiple jurisdictions), extensive motion practice (including discovery and dispositive motions), multiple fact depositions and preparation and cross examination of expert witnesses for trial (on complex topics such as statistics, pathology, radiology, molecular biology, occupational medicine, pharmacology, metallurgy, and other sciences), exhibits in the hundreds (and in some cases thousands), only to have the cases dismissed (and in some cases, settled) short of trial. Since becoming a partner in 1991, I have typically acted as leader or co-leader of the team of attorneys preparing such cases. I have been active in the drafting of legal briefs in all such cases.

I have served as a member of the Board of Directors and an officer of the North Carolina Association of Defense Attorneys, which is a service organization of civil defense attorneys designed to facilitate the exchange of ideas and promote excellence in the practice of law. Within my law firm, I serve periodically as faculty to younger lawyers through our internal litigation and trial training seminars (e.g., "learning-by-doing" sessions of trial practice). I also participate in our firm's program to mentor younger lawyers in the development of their careers.

21. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I have not taught any such courses.

22. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

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relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Womble Carlyle Sandridge & Rice, PLLC, Firm Operating (Partnership) Agreement: Under its terms, the firm management committee has up to 60 months from a member's departure to return funds in the member's Operating Reserve (capital account) and other accounts with the firm, although historically the firm accelerates, and in my case the firm will accelerate, payment to be made upon departure. The balance in my accounts as of December 31, 2006 was $164,796.94. In addition, I participate in the firm's member loan program, whereby members loan money to the firm. The balance of those loans as of December 31, 2006, which is due to me upon demand (and thus my departure) was $892,374.33.

Attorneys' Liability Assurance Society insurance contract: Under the terms of my law firm's contract for professional liability insurance, excess premium (reserve) is to be returned directly to me from the insurance company following my departure. The exact timing is unclear under the ALAS contract, but the firm has indicated that it will likely advance this payment immediately upon my departure. Current premium reserve: $7,642.08.

My qualified retirement accounts are managed by a third party, who will continue to manage them for me after my departure from my law firm.

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

25. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached financial net worth statement.

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26. **Potential Conflicts of Interest**:

a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Major Clients (or their related entities) for whom I have performed legal services in the past five years are: Chemcraft International, Inc.; Banner Pharmacaps, Inc.; Vulcan Materials Company; Wachovia Bank, National Association; Champion Industries; R. J. Reynolds Tobacco Co. (including parent Reynolds American, Inc., and predecessor by merger Brown & Williamson Tobacco Corporation); GlaxoSmithKline; Remington Arms Company, Inc.; Market America, Inc.; INVISTA S.a.r.l.; Duron, Inc.; JanPak; Shermag, Inc.; Steris Corp.; Quanta Services, Inc.; Rego Claimants Trust; F.E.M. Sales; Stronghaven, Inc.; Smart Corporation. Litigation involving R.J. Reynolds or its major competitors (Philip Morris USA Inc., and parent Altria; Lorillard Tobacco Company) involving health claims or payment obligations under the Master Settlement Agreement would present an area of conflict for me during my initial service. I would include the above named companies on my conflicts list and put a procedure in place, as noted in subpart b. below, to identify these conflicts before cases are assigned.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow the Code of Conduct for United States Judges and all applicable policies and procedures which have or will be established by the Judicial Conference and Administrative Office of the Courts. Consistent with those, I would seek to develop a conflicts avoidance plan after consulting several judges to determine what is the most effective. I would list the major former clients for whom I have personally worked, along with potential conflicts due to investments, to provide notice to the clerk's office for assignment purposes. If an electronic conflicts system can be used, I would hope to use such with the clerks' office before cases are assigned and with my law clerks as a double-check. During my initial period of service, I would plan to avoid matters involving attorneys at my former firm for a reasonable period of time following my departure. I would do my best to seek to avoid not only actual conflicts of interest but also the appearance of a conflict, whether one in fact exists.

27. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

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Early in my career, I volunteered with the Forsyth Court Volunteers' "Work & Earn It" program, where volunteers worked with youthful offenders to avoid recidivism, spending time on weekends with a youth and helping them earn money so they can pay restitution for the offenses with which they were charged. I have also handled a lawsuit pro bono for a woman abused by her husband (1990s) that involved approximately 50 hours or more. For a period of perhaps two years in the 1990s, I volunteered my time (and was trained) to partner with the local District Attorneys' office to prosecute sexual abuse cases and investigated one or more of them, but they must have reached plea deals as they were never tried.

In more recent years, as our firm has grown, (now over 500 lawyers), we have established a formal pro bono committee (with a full time pro bono lawyer) and allocate matters among some of our lawyers, including a recent pro bono effort (in which I am participating) to lend lawyers to New Orleans legal aid's effort to assist low-income residents clear title to their property (since many public records were destroyed in hurricane Katrina). In the community, I have been active in my children's school. I am very active in my son's Boy Scout troop, including teaching merit badges, including the Law merit badge which included my organizing, assisting the scouts in preparing outlines for, and conducting a mock trial with the scouts. In years past, I have also participated in the Phi Alpha Delta law fraternity's Law Related Education (LRE) effort (to promote law-related learning in the public schools), including serving as State Coordinator, a resource to teachers who teach law-related education in the classrooms. I also participated in LRE workshops, attended one of the national training seminars, and conducted a presentation in one of our local secondary education schools. In the late 1980s and early 1990s, I was active in the YMCA's Partnership with Youth campaigns. I have served on the Music Committee of, and taught Sunday school at, St. Paul's Episcopal Church, where I also am involved in the Men and Missions group that sponsors missionaries from the church in Honduras, and I have played guitar at the masses at Our Lady of Fatima church. I have acted as a volunteer to assist raising funds in our community's United Way and Arts Council campaigns.

28. **Selection Process**:

    a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

    There is no such selection committee in our judicial district. My career interest in seeking a federal judicial position was forwarded to the office of Senator Richard Burr. I provided background information to Senator Burr's staff, as well as to

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staff in Senator Dole's office, and met with representatives of both Senators. Subsequently, I was invited to meet with (and met) representatives from the White House and Department of Justice on June 12, 2006. I was contacted telephonically by the Department of Justice during the week of August 22, 2006, for further interviews. Following those interviews, and after completing all nomination paperwork, I was advised that my name would be forwarded to the Senate. I was nominated on September 29, 2006. My nomination was returned to the President on December 9, 2006. I was renominated on January 9, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Schroeder, Thomas D	Middle District of N C	1/12/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U S District Judge Nominee	☒ Nomination, Date 1/09/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/01/2006 to 12/31/2006
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
One West 4th Street Winston-Salem, N.C. 27101	Reviewing Officer_____ Date_____	

***IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of instructions.)*

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member (Partner)	Womble Carlyle Sandridge & Rice, PLLC
2. Board Member	FirmLogic, LLC
3. Board Member	FirmLogic International, LLC
4.	
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of instructions.)*

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 1/1/2006	ALAS Insurance Contract with Womble Carlyle Sandridge & Rice, PLLC; no control
2. 4/1/1994	Firm Operating Agmt, Womble Carlyle law firm, Operating Reserve balance payable up to 5 years following departure; other accounts paid upon departure
3. 3/1/1999	Keogh & 401(k) Plan, Womble Carlyle Sandridge & Rice, PLLC
4.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Schroeder, Thomas D	Date of Report 1/12/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2005	Womble Carlyle Sandridge & Rice, PLLC - Distribution and bonus	$ 908,782
2.	2006	Womble Carlyle Sandridge & Rice, PLLC - Distributions and bonus	$ 1,071,486
3.			
4.			
5.			
6.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☒ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		
5.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DESCRIPTION
1.	Exempt	
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Schroeder, Thomas D	Date of Report 1/12/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. American Express	Credit Card (monthly)	J
2. Mastercard/Visa	Credit Card (monthly)	J
3. Secondary education institution	tuition balance for 2006-07 school year	J
4. Secondary education institution	tuition balance for 2006-07 school year	J
5.		
6.		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Schroeder, Thomas D	1/12/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Certificates of Deposit & Account- BBT	E	Interest	O	T	Exempt				
2. Partner Loan Account- WCSR	E	Interest	O	T					
3. Wachovia Accounts	C	Interest	M	T					
4. BB&T Account	A	Interest	J	T					
5. US Treasury Series EE Bond		None	J	T					
6. Arbor Joint Account									
7. iShares Russell 1000 Index	B	Dividend	L	T					
8. iShares Russell 2000 Index	A	Dividend	K	T					
9. Russell International Securities Fund	B	Dividend	K	T					
10. Russell Emerging Markets Fund	A	Dividend	J	T					
11. Vanguard Limited-Term Tax-Exempt	A	Dividend	K	T					
12. Vanguard Short-Term Tax-Exempt	A	Dividend	K	T					
13. Fidelity Tax Free Money Market	A	Dividend	J	T					
14. Fidelity Municipal Money Market	A	Dividend							
15. IRA									
16. iShares Russell 1000 Index	A	Dividend	K	T					
17. Russell Select Growth Fund		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting Schroeder, Thomas D	Date of Report 1/12/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Russell Select Value Fund	A	Dividend	J	T					
19. iShares Russell 2000 Index	A	Dividend	J	T					
20. Russell International Securities Fund	B	Dividend	J	T					
21. Russell Emerging Markets Fund	A	Dividend	J	T					
22. Vanguard Inflation-Protected Sec.	A	Dividend	J	T					
23. Vanguard Short-Term Invstment-Grd	A	Dividend	J	T					
24. Eaton Vance Floating Rate Adv.	A	Dividend	J	T					
25. Fidelity Cash Reserves	A	Dividend							
26. Keogh									
27. iShares Russell 1000 Index	B	Dividend	M	T					
28. Russell Select Growth Fund		None	L	T					
29. Russell Select Value Fund	D	Dividend	L	T					
30. iShares Russell 2000 Index	A	Dividend	L	T					
31. Russell International Securities Fund	D	Dividend	L	T					
32. Russell Emerging Markets Fund	C	Dividend	K	T					
33. Vanguard Inflation-Protected Sec.	C	Dividend	M	T					
34. Vanguard Short-Term Invstmnt-Grd	B	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$10,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Schroeder, Thomas D	1/12/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Eaton Vance Floating Rate Adv	B	Dividend	L	T					
36. Marshall Prime Money Market Cl Y	A	Dividend	J	T					
37. M&I Stable Principal Fund	A	Dividend							
38. Custodial Account									
39. DWS Value Builder Fund Cl A	A	Dividend	K	T					
40. Mass Mutual Whole Life Insurance	C	Dividend	L	T					
41. Mass Mutual Whole Life Insurance	A	Dividend	J	T					
42. Loyal American Insurance	A	Dividend							
43. Winston-Salem Foundation Donor Advised Fund		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Schroeder, Thomas D	Date of Report 1/12/2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Section VII. Treasury EE bonds value based on value reported on the government website (http://wwws.publicdebt.treas.gov/BC/SBCPrice) as of December 2007.

The Winston-Salem Foundation Donor Advised Fund is money we donated irrevocably to, and owned by, the Foundation but I and my spouse can direct donations from that Fund to charities of our choice. We can receive no income from its investment; rather the Fund receives any income.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Schroeder, Thomas D	Date of Report 1/12/2007

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Thomas J Schroeder Date January 12, 2007

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		653	475	Notes payable to banks-secured			
U.S. Government securities-add schedule		7	826	Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:		892	374	Accounts and bills due		13	249
Due from relatives and friends				Unpaid income tax			
Due from others		172	438	Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		299	046
Real estate owned-add schedule		806	184	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		37	875	2006-07 Tuition payments		12	390
Cash value-life insurance		73	572				
Other assets itemize:							
Country Club membership		42	000				
401(k) and Keogh Accounts		732	951				
IRA accounts		308	777	Total liabilities		324	685
(household assets omitted)				Net Worth	3	402	787
Total Assets	3	727	472	Total liabilities and net worth	3	727	472
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	$ 7,826
Real Estate Owned (cost basis)	
Personal residence #1	$ 458,184
Personal residence #2	348,000
Total Real Estate Owned	$ 806,184
Real Estate Mortgages Payable	
Personal residence #1	$ 90,297
Personal residence #2	208,749
Total Real Estate Mortgages Payable	$ 299,046

AFFIDAVIT

I, Thomas David Schroeder, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/2/07
(DATE)

Thomas David Schroeder
(NAME)

Joyce H. Cobb
(NOTARY)

OFFICIAL SEAL
JOYCE H. COBB
NOTARY PUBLIC-NORTH CAROLINA
COUNTY OF FORSYTH

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Amul Roger Thapar (Amul Thapar)

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Eastern District of Kentucky.

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: United States Attorney's Office, 260 West Vine Street, Lexington, KY 40507

   Residence: Edgewood, KY

4. **Birthplace**: State year and place of birth.

   Detroit, Michigan, 1969

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Spouse: Kimberly Ann Thapar (maiden name: Schulte); Homemaker
   Dependent Children: 3

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Boalt Hall School of Law, University of California, Berkeley; 8/92 to 5/94; Juris Doctorate, May 1994

   Ohio State University College of Law, 8/91 to 5/92; no degree (Transferred)

   Boston College, 9/87 to 5/91; Bachelor of Science, May 1991

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7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Employment:

March 2006 to Present
United States Attorney's Office for the Eastern District of Kentucky
260 West Vine Street, Suite 300, Lexington, Kentucky 40507
Position: United States Attorney

May 2002 to March 2006
United States Attorney's Office for the Southern District of Ohio
221 E. Fourth Street, Suite 400, Cincinnati, Ohio, 45202, Cincinnati, Ohio
Position: Assistant United States Attorney

August 2001 to May 2002
Squire, Sanders & Dempsey
312 Walnut Street, Suite 3500, Cincinnati, Ohio 45202
Position: Associate

December 2000 to August 2001
Equalfooting.com (a/k/a Equidity, Inc.)
22977 Eaglewood Court, Sterling Virginia 20166 (last known address – no longer in existence)
Position: General Counsel

January 1999 to December 2000
United States Attorney's Office for the District of Columbia
555 4th Street, N.W., Washington, D.C. 20530
Position: Assistant United States Attorney

July 1997 to January 1999
Williams & Connolly
725 Twelfth Street, N.W., Washington, D.C. 20005
Position: Associate

July 1996 to July 1997
Honorable Nathaniel R. Jones
United States Court of Appeals for the Sixth Circuit
432 United States Courthouse, Cincinnati, Ohio 45202
Position: Law Clerk

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August 1994 to July 1996
Honorable S. Arthur Spiegel
United States District Court for the Southern District of Ohio
838 United States Courthouse, Cincinnati, Ohio 45202
Position: Law Clerk

May 1994 to July 1994
Jenner & Block
One IBM Plaza, Chicago, IL 60611
Position: Summer Associate

August 1993
Modrall, Sperling, Roehl, Harris & Sisk
500 4th Street, Suite 1000, Albuquerque, N.M. 87103
Position: Summer Associate

May 1993 to August 1993
Jenner & Block
One IBM Plaza, Chicago, IL 60611
Position: Summer Associate

May 1992 to August 1992
Modrall, Sperling, Roehl, Harris & Sisk
500 4th Street, Suite 1000, Albuquerque, N.M. 87103
Position: Summer Associate

May 1991 to August 1991
Frische-Mullin Heating and Air Conditioning
5132 Enterprise Drive, Toledo, Ohio 43612
Position: Truck Driver

Teaching:

August 2002 to December 2006
University of Cincinnati College of Law
2600 Clifton Avenue, Cincinnati, Ohio 45221
Position: Adjunct Professor

September 1999 to December 2000
Georgetown University Law Center
600 New Jersey Avenue, N.W., Washington, D.C. 20001
Position: Trial Advocacy Instructor

September 1995 to July 1997
University of Cincinnati College of Law

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2600 Clifton Avenue, Cincinnati, Ohio 45221
Position: Adjunct Professor

Other Affiliations:

March 2006 to present
Appalachia HIDTA
P.O. Box 5070, London, KY 40745-5070
Position: Board Member and Vice-Chairman

May 2004 to January 3, 2006
Northern Kentucky Montessori School
2625 Anderson Road, Crescent Springs, KY 41017
Position: Board of Directors (Vice President/Secretary)

December 2001 to May 2002
The Conservative Forum
121 Wessex Place, Fort Thomas, KY 41075
Position: Board Member

December 2001 to May 2002
Commonwealth Political Action Committee
8304 Woodcreek Drive, Florence, KY 41042
Position: Board Member

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

College: National Honor Society
Law School: Moot Court Board

United States Attorney's Office:
Special Achievement Award for Outstanding Work

I have been recognized by numerous federal law enforcement agencies for my prosecutive efforts including, the Federal Bureau of Investigation, the United States Secret Service, the United States Postal Inspection Service, and the Internal Revenue Service.

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I have also been recognized by several other agencies for supporting their efforts including Operation UNITE (Unlawful Narcotics Investigations, Treatment, and Education) and the Rural Law Enforcement Technology Center.

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
D.C. Bar Association
Kentucky Bar Association

(When I became a member of the Illinois, Maryland, and Ohio bars, they may have given me a complimentary membership in their bar for the first year).

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Kentucky, 12/15/2005
Ohio, 5/20/2002
District of Columbia, 9/11/1998
Maryland, 12/18/1997
Illinois, 11/10/1994

I am no longer an active member of the bar in Illinois, Maryland, the District of Columbia, or Ohio. In each of these jurisdictions I am in good standing, but have voluntarily selected inactive or retired status. During my legal career with the Department of Justice, I have maintained active status with at least one state bar organization pursuant to Department of Justice Guidelines.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Kentucky Supreme Court (Active) - Admitted: 12/15/2005
Supreme Court of Ohio (Inactive*) – Admitted: 5/20/2002
District of Columbia Court of Appeals (Retired Status*) - Admitted: 9/11/1998
Maryland Court of Appeals (Inactive*) - Admitted: 12/18/1997
Illinois Supreme Court (Retired Status*) - Admitted: 11/10/1994
United States Court of Appeals for the District of Columbia Circuit – Admitted: 1/11/2000
United States Court of Appeals for the Sixth Circuit - Admitted: 4/23/1997

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United Sates District Court for the Southern District of Ohio – Admitted: 9/13/1996
United States Court of Claims – Admitted: 12/3/1998

*I have maintained active status with at least one state bar organization pursuant to Department of Justice Guidelines.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Mother of God Church, 1996-97
Beckett Fund for Religious Liberty, 1998-1999
The Cincinnati Zoo (family membership), intermittent between 2001 and present
St. Pius X Church, 2001 to present
Traditions Golf Club, 2001-2002
Ashley Green Homeowners' Association, 2002 to present
Silverlake Family Recreation Center, 2005 to present (gap in membership in 2006)
Newport Aquarium, 2004 to present (there was a gap in membership)
The Federalist Society, 2005 to present
President's Identity Theft Task Force Subcommittee, 2006
Kentucky Association of Chiefs of Police, 2006 to present
International Association of Chiefs of Police, 2006 to present
Attorney General's Advisory Committee ("AGAC"), January 2007 to present
AGAC Controlled Substances and Asset Forfeiture Subcommittee, Chairperson, January 2007 to present (on Subcommittee 2006 to present)
AGAC Violent Crime Subcommittee, 2006 to present
AGAC Child Exploitation and Obscenity Working Group, 2006 to present
AGAC Terrorism Subcommittee, 2007 to present
Appalachia High Intensity Drug Trafficking Area Executive Board, Vice-Chairman, 2007 to present (on Board 2006 to present)

As United States Attorney, I also serve on numerous law enforcement task forces, such as the Anti-Terrorism Advisory Council, the Kentucky Homeland Security Task Force, the Kentucky School Safety Task Force, and the like. Operation UNITE (Unlawful Narcotics Investigations, Treatment, and Education) also lists the United States Attorney as an honorary non-voting board member.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization

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that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of these organizations discriminate on the basis of race, sex, or religion.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have written one article on the proliferation of the illegal use of prescription narcotics. It is attached hereto. It will be published in the Kentucky Law Enforcement Magazine in June. As a member of the Ecology Law Quarterly, I regularly reviewed and assisted in reviewing articles that were ultimately published in the law journal. Those reviews were for style not substance.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the

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speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

While serving as United States Attorney, I am frequently called upon to speak regarding law enforcement issues or the work of the office. All of these presentations have been delivered extemporaneously or using notes in bullet-point fashion. I am not aware of recordings or transcripts of these presentations.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

As United States Attorney, I frequently speak with the media regarding official matters, including appearances on radio and television. On several occasions as an Assistant United States Attorney, I answered some limited questions for the media regarding official matters. Other than these occasions, I have not participated in interviews.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. **Citations**: If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

b. a list of cases in which certiorari has been requested or granted;

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

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f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never served as a judge.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have never served as a judge.

17. **Public Office, Political Activities and Affiliations:**

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In March 2006 I was appointed United States Attorney for the Eastern District of Kentucky by President George W. Bush.

During early 2004 I was a finalist for a position as United States Magistrate Judge in the Southern District of Ohio, but was not selected.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the

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particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a position in a political campaign. I did do the following volunteer work for the campaigns listed below:

October and November 2002: I stuffed envelopes, put up yard signs, and handed out literature in the Geoff Davis for United States Congress Campaign (Kentucky's Fourth Congressional District).

October and November 2003: I handed out literature and put up yard signs for Governor Ernie Fletcher and Secretary of State Trey Grayson. I also volunteered in the 72-hour campaign for the entire Republican Ticket – we went door-to-door passing out literature.

November 2004: I volunteered in the 72-hour campaign for President Bush, Senator Jim Bunning and Congressman Geoff Davis. We went door-to-door passing out literature. I also assisted in putting up yard signs for the same candidates.

From the fall of 2001 to April 2002, I was a member of the Commonwealth Political Action Committee. That committee would identify young aspirants to state and local political office in Kentucky and donate money to their campaigns. The members of the committee donated to a fund every year that would be used to make these contributions.

18. **Legal Career:** Please answer each part separately.

    a. Describe chronologically your law practice and legal experience after graduation from law school including:

        i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

        Honorable S. Arthur Spiegel, United States District Court for the Southern District of Ohio, August 1994 to July 1996

        Honorable Nathaniel R. Jones, United States Court of Appeals for the Sixth Circuit, July 1996 to July 1997

        ii. whether you practiced alone, and if so, the addresses and dates;

        I have not practiced alone.

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iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

University of Cincinnati College of Law, 2600 Clifton Avenue, Cincinnati, Ohio 45221, September 1995 to July 1997 (Adjunct Professor)

Williams & Connolly, 725 Twelfth Street, N.W., Washington, D.C. 20005, July 1997 to January 1999 (Associate)

Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001, September 1999 to December 2000 (Trial Advocacy Instructor)

United States Attorney's Office for the District of Columbia, 555 4th Street, N.W., Washington, D.C. 20530, January 1999 to December 2000 (Assistant United States Attorney)

Equalfooting.com (Equidity, Inc.), 22977 Eaglewood Court, Sterling Virginia 20166 (last known address – no longer in existence), December 2000 to August 2001 (General Counsel – I continued in a General Counsel capacity while at Squire, Sanders & Dempsey until the assets of the company were sold)

Squire, Sanders & Dempsey, 312 Walnut Street, Suite 3500, Cincinnati, Ohio 45202, August 2001 to May 2002 (Associate)

United States Attorney's Office for the Southern District of Ohio, 221 E. Fourth Street, Suite 400, Cincinnati, Ohio, 45202, May 2002 to March 2006 (Assistant United States Attorney)

University of Cincinnati College of Law, 2600 Clifton Avenue, Cincinnati, Ohio 45221, August 2002 to December 2005 (Adjunct Professor)

United States Attorney's Office for the Eastern District of Kentucky, 260 West Vine Street, Suite 300, Lexington, Kentucky 40507, March 2006 to present (United States Attorney)

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

1994 to 1997: I served as a law clerk for the Honorable S. Arthur Spiegel,

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United States District Court for the Southern District of Ohio (1994 to 1996) and the Honorable Nathaniel R. Jones, United States Court of Appeals for the Sixth Circuit (1996 to 1997).

1997 to 1999 and 2001 to 2002: While in private practice, I had the opportunity to manage sophisticated, complex commercial litigation. I oversaw several other associates, managed (or helped manage) the litigation and discovery, and assisted in settling several complex cases on behalf of major clients.

1999 to 2000: While at the United States Attorney's Office for the District of Columbia, my practice focused on criminal prosecution. I handled appellate work, domestic violence, child sex abuse, and general sex crimes. I argued approximately ten to twelve appeals and conducted a large number of bench trials and one jury trial.

2000 to 2001: While at Equalfooting.com, I served as General Counsel. As General Counsel, I oversaw litigation and general corporate practice.

2002 to 2006: While at the United States Attorney's Office for the Southern District of Ohio, my practice focused on criminal prosecution. During this period, I tried cases and handled various appellate matters. I specialized in white-collar crimes, homeland-security related crimes, public corruption crimes, drug crimes, and violent crimes.

2006 to present: While at the United States Attorney's Office for the Eastern District of Kentucky, I serve as the United States Attorney. In this capacity, I supervise all civil and criminal litigation in the Eastern District of Kentucky. In addition, I work with individual lawyers to help them prepare indictments, pleadings, and for trial.

ii. your typical clients and the areas, if any, in which you have specialized.

1997 to 1999: While at Williams & Connolly, I did not have any clients of my own. I worked as an associate and represented various individuals and companies in litigation. I handled discovery, discovery disputes, motions, and depositions.

1999 to 2000: While at the United States Attorney's Office for the District of Columbia, my practice focused on criminal prosecution.

2000 to 2001: I served as general counsel for Equalfooting.com and oversaw all legal work for the corporation.

2001 to 2002: While with Squire, Sanders & Dempsey, I had several small clients. I also represented a major bank and some other major

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corporations. I handled discovery, discovery disputes, motions, and depositions.

2002 to 2006: While at the United States Attorney's Office for the Southern District of Ohio, my practice focused on criminal prosecution.

2006 to present: As United States Attorney, I supervise the United States Attorney's Office for the Eastern District of Kentucky and its civil and criminal practice.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

While at the United States Attorney's Office for both the Southern District of Ohio and before that in the District of Columbia, 100% of my practice was litigation. I appeared in court on almost a daily basis. I conducted trials and appeared for preliminary hearings, status conferences, motion hearings, and sentencings. In addition, I argued a number of appeals.

While in private practice, approximately 90% of my practice was in litigation. I appeared far less frequently in court. My appearances were limited to settlement conferences and civil status conferences.

While I was a general counsel, approximately 40% of my practice was in litigation. I did not appear in court.

As United States Attorney, I have not had the opportunity to appear in court other than to observe proceedings and to meet with victims. I deal with litigation approximately 20% of the time.

i. Indicate the percentage of your practice in:

1. federal courts: 80%
2. state courts of record: 20%
3. other courts: 0%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 30%
2. criminal proceedings: 70%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

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I have tried approximately fifty cases to verdict. In most of the cases, I was either Sole Counsel or Lead Counsel.

i. What percentage of these trials were:

1. Jury: 15%;
2. non-jury: 85%.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. John Todd Killinger; United States v. Roger Pepples; United States v. Donald Powers; United States v. Philip Jasper; United States v. Richard Reynolds, United States v. Ronald Trester*; United States District Court for the Southern District of Ohio; Honorable Susan J. Dlott; Case Numbers: Cr 1-04-77; 1-04-78; 1-04-140; 1-05–11; 1-05-86; October 14, 2002 to October 28, 2005

In these cases, I prosecuted a number of individuals in a wide-ranging scheme involving property flipping and mortgage fraud. Generally, the defendants would buy properties out of foreclosure sales and then recruit a buyer for that property. The buyer was typically someone who could not afford otherwise to purchase real estate or someone interested in properties as an investor. Next, they would obtain a falsely-inflated appraisal for the property. Finally, they would prepare a loan application for the inflated price and use false documents in support of that loan application, including false pay stubs, W-2 forms, bank statements, and employment verifications. Once the loan was funded, the conspirators would divide the illegal profits. Ultimately, the conspiracy abandoned many of these

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properties, many of which were located in low-income neighborhoods, and the abandoned homes attracted drug-sellers, drug-users, and the like. The six individuals listed above pled guilty, cooperated, and were sentenced to terms of imprisonment ranging from six months to four years. I was lead counsel, representing the United States of America.

Opposing Counsel:

Counsel for John Todd Killinger:
Paul M. Laufman, Esq.
Laufman, Jensen & Napolitano
30 Garfield Place, Suite 750
Cincinnati, Ohio 45202
(513) 621-4556

Counsel for Philip Jasper:
William M. Welsh, Esq.
215 East Ninth Street
Suite 100
Cincinnati, Ohio 45202
(513) 241-1989

Counsel for Roger Pepples:
Perry Leslie Ancona, Esq.
917 Main Street
Second Floor
Cincinnati, Ohio 45202
(513) 721-1997

Counsel for Donald Powers:
Jack C. Rubenstein, Esq.
Rubenstein & Thurman, LPA
Federated Building
7 W. Seventh Street, Suite 1850
Cincinnati, Ohio 45202
(513) 241-7460

Counsel for Richard Reynolds
Honorable Michael R. Barrett
Potter Stewart United States Courthouse, Room 815
100 East Fifth Street
Cincinnati, Ohio 45202
(513) 564-7660

Counsel for Ronald Trester:
Patrick J. Hanley, Esq.

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214 East Fourth Street
Covington, KY 41011
(859) 431-7077

2. *United States v. Charles Hildebrant;* United States District Court for the Southern District of Ohio; Honorable Michael H. Watson; Case Number: Cr 1-05-002; August 2004 to October 20, 2005

The defendant was the owner of a minor league baseball team, the Florence Freedom. In purchasing the team, he fraudulently obtained numerous bank loans by submitting false financial documents. The defendant also violated the Campaign Finance Reform Act by using straw donors to make political contributions. Finally, the defendant evaded taxes by not reporting significant amounts of income. The defendant pled guilty. The Court sentenced the defendant to 60 months' imprisonment on the bank fraud, 24 months for making a political contribution in the name of another, and 36 months for filing a false tax return. All of the sentences are to be served concurrently. I was lead counsel for the United States of America.

Opposing Counsel:

Jack C. Rubenstein, Esq.
Rubenstein & Thurman, LPA
Federated Building
7 W. Seventh Street, Suite 1850
Cincinnati, Ohio 45202
(513) 241-7460

3. *United States v. Tammy* Black; United States District Court for the Southern District of Ohio; Honorable S. Arthur Spiegel; Case Number: Cr 1-05-025; November 24, 2004 to December 1, 2005

Tammy Black conspired with others to provide illegal aliens with Ohio driver's licenses and identification documents that coded the illegal aliens as United States citizens. This allowed these illegal aliens to remain in the United States undetected by law enforcement and others. We also prosecuted Ms. Black's co-conspirator and many of the illegal aliens that unlawfully obtained the Ohio identification documents. Defendant Tammy Black pled guilty, cooperated against her coconspirator and the other defendants, and received 4 months' imprisonment and 4 months' home-confinement. I was lead counsel for the United States of America.

Name of Associate Counsel:

Karl P. Kadon, Esq.
Ben Glassman, Esq.

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United States Attorney's Office for
the Southern District of Ohio
221 E. Fourth Street, Suite 400
Cincinnati, Ohio 45202
(513) 684-3711

Name of Defendant's Counsel:

W. Kelly Johnson
Assistant Federal Public Defender
2000 CBLD Building
36 East Seventh Street
Cincinnati, Ohio 45202
(513) 929-4834

4. *United States v. Anthony Davis*; United States District Court for the Southern District of Ohio; Honorable Susan J. Dlott; Case Number: Cr 1-02-076; June 2002 until October 2, 2003

This case involved the president of an environmental disposal company, who routinely received checks for deposit made out to the company, transferred the checks across state lines, and then deposited them in an account in the name of the company. Every time he deposited the checks into the company account, he would withdraw a portion of the funds in cash, which he stole from the company. The defendant pled guilty and was sentenced to 33 months' imprisonment. I was lead counsel for the United States of America.

Name of Defendant's Counsel:

Richard Smith-Monahan, Esq.
Assistant Federal Public Defender
2000 CBLD Building
36 East Seventh Street
Cincinnati, Ohio 45202
(513) 929-4834

5. *United States v. Maurice Jouett*; United States District Court for the Southern District of Ohio; Honorable S. Arthur Spiegel; Case Number: Cr 1-02-074; May 2002 to February 5, 2004

This case involved the interstate distribution of crack cocaine. During a sting operation, the defendant was arrested by the Regional Narcotics Unit ("RENU"). During the arrest, RENU discovered narcotics and a firearm. The grand jury indicted the defendant for distributing crack cocaine and carrying a firearm during and in relation to a drug trafficking offense. A jury convicted the defendant on all counts. The defendant was sentenced to 228 months' imprisonment. The United

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States Court of Appeals affirmed the defendant's conviction and sentence. *See United States v. Maurice Jouett*, No. 03-3214, 87 F. App'x 539 (6th Cir. February 5, 2004). I served as lead counsel for the United States of America.

Name of Defendant's Counsel:

C. Ransom Hudson, Esq. (trial counsel)
Assistant Federal Public Defender
2000 CBLD Building
36 East Seventh Street
Cincinnati, Ohio 45202
(513) 929-4834

William R. Gallagher, Esq. (appellate counsel)
Arenstein & Gallagher
The Citadel
114 E. Eighth Street
Cincinnati, Ohio 45202
(513) 651-5666

6. *United States v. Abdel Razaq*; United States District Court for the Southern District of Ohio; Honorable Michael H. Watson; Case Number: Cr 1-05-029; January 10, 2005 until July 28, 2005

The defendant entered into a sham marriage with an American citizen in an attempt to obtain United States citizenship. After entering into the marriage, the defendant filed numerous false documents with the Immigration and Naturalization Service. The defendant pled guilty and was sentenced to five months' imprisonment. I served as lead counsel for the United States of America.

Name of Defendant's Counsel:

Firooz T. Namei
McKinney & Namei Co., LPA
15 East Eighth Street
Cincinnati, Ohio 45202
(513) 721-0200

7. *United States v. Brenda Privett and Cathy Montessi*; United States District Court for the Southern District of Ohio; Honorable Sandra S. Beckwith; Case Number: Cr 1-02-078; June 2002 to July 21, 2003

This case involved the owners of a title insurance company. Both owners embezzled money from escrow accounts of the title insurance company. In total, the defendants embezzled approximately $638,925.37. Both defendants pled

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guilty, cooperated, and served one year in prison. I served as lead counsel for the United States of America.

Name of Defendant's Counsel:

Martin Pinales, Esq. (Defendant Brenta Privett)
Sirkin, Pinales & Schwartz
920 4th & Race Tower
105 W. 4th Street
Cincinnati, Ohio 45020
(513) 721-4876

James H. Voyles, Esq. (Defendant Cathy Montessi)
Zahn, Paul, Hogan & Merriman
700 Jefferson Plaza
One Virginia Avenue
Indianapolis, Indiana 46204
(317) 632-4463

8. *United States v. Johnnie Edwards*; District of Columbia Court of Appeals; Panel: Honorable Annice M. Wagner, Honorable John M. Steadman, and Honorable Theodore R. Newman, Jr.; Case Number: Reported at 767 A.2d 241 (D.C. 2001); March 1999 to December 2000.

Defendant Johnnie Edwards was convicted of the second-degree murder of his infant daughter and assault with a dangerous weapon of her twin (along with cruelty to children). The defendant placed his infant twins in a scalding bath containing bleach, peroxide, and rubbing alcohol. One of the infant twins died from her burns and the other suffered severe injuries. The defendant was convicted on all counts by the jury. The defendant raised numerous claims of error on appeal. The appellate court affirmed the defendant's conviction. *See United States v. Edwards* 767 A.2d 241 (D.C. 2001). I was lead appellate counsel for the United States of America.

Name of Supervisory Counsel:

Honorable John Fisher
District of Columbia Court Appeals
Moultrie Courthouse
500 Indiana Ave., N.W.
Washington, D.C. 2001
(202) 879-2750

Name of Defendant's Counsel:

Kurt H. Jacobs, Esq.

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Jeffrey T. Green, Esq.
Sidley Austin Brown & Wood LLP
1501 K Street NW
Washington DC 20005
(202) 736-8378

9. *United States v. Danny Burgin*; United States District Court for the Southern District of Ohio and United States Court of Appeals for the Sixth Circuit; District Court Judge: Honorable Sandra S. Beckwith; Sixth Circuit Judges: Honorable Julian Abel Cook, Jr. (District Judge), Honorable R. Guy Cole, Jr., and Honorable Robert B. Krupansky; Case Number: Reported at 388 F.3d 177 (6th Cir. 2004), *cert. denied*, 125 S. Ct. 1692 (2005); May 2002 to November 3, 2004

The defendant was arrested for possessing with intent to distribute narcotics and being a felon in possession of a firearm. The United States charged the defendant with being a career armed offender (three prior violent felonies). The defendant pled guilty, but argued that the United States had to prove to the jury that the prior violent felonies were distinct and separate crimes beyond a reasonable doubt in order for his sentence to be enhanced. The defendant was sentenced to 180 months. The United States Court of Appeals for the Sixth Circuit affirmed the district court, and the United States Supreme Court denied *certiorari*. *See United States v. Burgin,* 388 F.3d 177 (6th Cir. 2004), *cert. denied*, 125 S. Ct. 1692 (2005). I served as lead trial and appellate counsel for the United States of America.

Name of Defendant's Counsel:

Hal Arenstein, Esq. (trial counsel)
Arenstein & Gallagher
The Citadel
114 E. Eighth Street
Cincinnati, Ohio 45202
(513) 651-5666

Jason M. Cohen, Esq. (appellate counsel)
Keating, Muething & Klekamp
1 East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
(513) 579-6527

10. *United States v. Terrence Keller Watkins*; United States District Court for the Southern District of Ohio; Honorable Sandra S. Beckwith; Case Number: Cr 1-02-094; May 28, 2002, to February 6, 2004

The defendant committed bank fraud by passing numerous bad checks. The defendant pled guilty, but failed to appear for sentencing. The government moved

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to have him sentenced *in abstentia* since he voluntarily failed to appear for sentencing. The district court agreed and sentenced him *in abstentia* to 57 months' imprisonment. The defendant appealed to the United States Court of Appeals for the Sixth Circuit, which affirmed his conviction and his sentencing. *See United States v. Terrence Keller Watkins*, 86 F. App'x 934 (6th Cir. February 6, 2004). I served as lead trial and appellate counsel for the United States of America.

Name of Defendant's Counsel:

Richard Smith-Monahan, Esq.
Assistant Federal Public Defender
2000 CBLD Building
36 East Seventh Street
Cincinnati, Ohio 45202
(513) 929-4834

20. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

A. Equalfooting.com

From December 2000 to August 2001, I served as the General Counsel for Equalfooting.com, which was a 200-person internet business focused on construction. In my capacity as General Counsel, I supervised and led all dispute resolution on behalf of the company, advised management on a variety of issues (both corporate and litigation), and assisted in the management of the company (at that time). This allowed me to obtain significant management experience during a difficult period for small internet businesses and also to see how litigation affected a small corporation.

B. Starbucks Homicides

On July 6, 1997, three people were murdered in the Starbucks located in the Georgetown University area. During my tenure at the United States Attorney's Office for the District of Columbia, I worked on the response to defense motions that sought to exclude pivotal statements by the defendant. We eventually won these motions, and the defendant pled guilty to life without parole.

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C. Appalachia HIDTA

While serving on the Board of the Appalachia HIDTA, I have worked with the Board on numerous initiatives, including enhancing our public corruption task force, setting up a highway interdiction task force, and ensuring that law enforcement agencies are fiscally responsible. The public corruption task force has utilized the funding to set up several large-scale investigations that have led to the dismantling of large-scale drug operations and multiple indictments.

D. United States Attorney

As United States Attorney, I have worked with my management team and law enforcement to better organize the office to serve the public. As a result, under my direction, the office has established a Prison Litigation Unit to serve the five federal prisons in our district. I have set up a violent crime and child predator unit to focus on gangs and child predators. I have also worked to enhance our narcotics unit. In addition, I supervise a public awareness campaign regarding the illegal diversion of prescription narcotics and a separate campaign regarding child predators. As part of this campaign, I have met with rotary clubs, parent-teacher associations, and other groups to educate them on these topics. Finally, as United States Attorney, I have had the opportunity to work with younger lawyers and provide them with mentoring. Under my direction, the office has established a formal mentoring program for new lawyers in our office. I have also worked with the local law schools to provide law students an opportunity to work in our office.

E. Lobbying – None.

21. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I served as an adjunct professor at the University of Cincinnati College of Law from 1995 to 1997 and 2002 to 2005. During this period, I taught Street Law (1995 to 1997) and Federal Criminal Practice (2002 to 2005) to second- and third-year law students and assisted other professors by teaching various classes. Federal Criminal Practice involved how to practice criminal law in federal court from discovery through trial.

I also served as a Trial Advocacy Instructor at Georgetown University Law Center between September 1999 and December 2000. As a Trial Advocacy Center, I worked with a Trial Advocacy team to prepare for a mock trial competition.

22. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

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contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have a thrift-savings plan (401K) with the federal government. I also am a participant in the Federal Employees Retirement System ("FERS").

23. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not currently have any plans, commitments, or agreements, but would like to teach trial advocacy or the like as an adjunct (without compensation) at one of the local law schools after being on the court for a few years.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

25. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include any cases or matters that were opened while I served as United States Attorney. I will follow established procedures for identifying and avoiding any such conflicts.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

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In all such cases, I would follow the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. § 455, and other relevant recusal rules or guidelines.

27. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Between 1995 and 1997, I founded, managed, and taught the Street Law chapter at the University of Cincinnati College of Law. This program is directed toward students at inner-city high schools. The object of the program is to have law students go to inner-city schools and juvenile detention centers and teach young men and women about different areas of the law. The premise behind the program is that once young men and women understand the law, why it exists, and how it can benefit all who participate productively in society, they will learn to operate within society's laws. During my tenure as a law clerk, I founded the chapter at the University of Cincinnati, raised money for the textbooks for the various inner-city schools, and then taught the law students (who in turn would teach in the schools). The program continues today at the University of Cincinnati College of law. I devoted hundreds of hours to getting this program established and teaching it.

Between 1996 and 1997, I worked with troubled inner-city youth in a program designed to take them away from the inner-city for a week (into a camp setting) and focus there on spirit-building and the problems they face. The program was run by Youth Opportunities United. Generally, we devoted some time to get ready for the week at camp and then an entire week to putting on the camp.

Between 1998 and 1999, while at Williams & Connolly, another attorney and I represented a young, indigent defendant who wanted to get his record expunged of a misdemeanor conviction. I devoted approximately twenty to thirty hours to this matter.

Since becoming an Assistant United States Attorney and ultimately United States Attorney, my ability to do legal work in the community has been restricted. Thus, I have mainly taught at the University of Cincinnati College of Law. During this time, I have both taught my own class and volunteered to help others at the law school by teaching individual classes. I have devoted a significant amount of time to preparing for and teaching these classes. As United States Attorney, I have done significant public speaking in an educational role – where I have spoken with parents of the dangers of the diversion of prescription narcotics and other such topics.

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28. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

My initial interview was with Minority Leader McConnell's staff and Senator Bunning's staff. This interview occurred on December 14, 2006. On January 23, 2007, I interviewed with Senator McConnell, Senator Bunning, and members of their staff.

On February 21, 2007, I interviewed with staff from the White House Counsel's office and the Department of Justice. I was subsequently informed that I had been selected as the preliminary candidate. I was asked by the Department of Justice to complete nomination forms and have had periodic conversations with them regarding those forms. My nomination was submitted to the United States Senate on May 24, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

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FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Thapar, Amul R	U.S. District Court EDKY	05/26/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge -- Nominee	[X] Nomination, Date 5/24/2007 [ ] Initial [ ] Annual [ ] Final 5b. [ ] Amended Report	1/1/2006 to 5/26/2007
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
U.S. Attorney's Office 260 W. Vine Street, Ste. 300 Lexington, Kentucky 40507	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of instructions.)*

[ ] NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Board of Directors and Vice Chairman	Appalachia HIDTA
2. Member	Attorney General's Advisory Committee (AGAC)
3. Chairman	AGAC Controlled Substances and Asset Forfeiture Subcommittee
4. Member	AGAC Terrorism Subcommittee, Violent Crime Subcommittee and Child Exploitation and Obscenity Working Group
5. Honorary Non-Voting Board Member	Operation UNITE (Unlawful Narcotics Investigations, Treatment, and Education)

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of instructions.)*

[X] NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting	Date of Report
	Thapar, Amul R	05/26/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

[X] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			
5.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

[X] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		
5.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

[ ] NONE *(No reportable reimbursements.)*

	SOURCE	DESCRIPTION
1.	EXEMPT	
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Thapar, Amul R	Date of Report 05/26/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. EXEMPT		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of Instructions.)*

☒ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Thapar, Amul R	05/26/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) "Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. ING Direct Savings Account	B	Interest	K	T	Exempt				
2. Vanguard Prime Money Market	A	Interest	J	T					
3. TD Bank USA (Ameritrade Money Market)	A	Interest	K	T					
4. Fifth Third Bank (Checking Acct.)	A	Interest	J	T					
5. Paypal Inc. (Money Market)	A	Interest	J	T					
6. Autozone Inc. (AZO) Common		None	J	T					
7. Nuance Comm. Inc. (NUAN) Common		None	J	T					
8. Select Comfort Corp. (SCSS) Common		None	J	T					
9. Volcom Inc. (VLCM) Common		None	J	T					
10. Accenture Ltd (ACN) Common	A	Dividend	J	T					
11. Dawson Geophysical Co. (DWSN) Common		None	J	T					
12. Electro Scientific Indus. Inc. (ESIO) Common		None	J	T					
13. Hussman Strategic Growth Fund (HSGFX)	A	Dividend	J	T					
14. Lloyds TSB Group ADR (LYG)	A	Dividend	J	T					
15. Grupo Areoportuario Del Pac (PAC)		None	J	T					
16. Universal Technical Institute (UTI) Common		None	J	T					
17. Zumiez Inc. (ZUMZ) Common		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
3. Value Method Codes (See Column C2)	I =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Thapar, Amul R	05/26/2007

VII. INVESTMENTS and TRUSTS — *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g. buy, sell, merger, redemption)	D. If not exempt from disclosure: (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Activdentity Corp. (ACTI) Common		None	J	T					
19. Chipotle Mexican Grill Inc. (CMG/B) Common		None	J	T					
20. Columbia Sportswear Co. (COLM) Common	A	Dividend	J	T					
21. Endurance Specialty Holdings (ENH) Common	A	Dividend	J	T					
22. Middelby Corp. (MIDD) Common		None	J	T					
23. Wexford TR Muhlenkamp FD (MUHLX)	A	Dividend	J	T					
24. New York & Company (NWY) Common		None	J	T					
25. Portfolio Recovery Assoc. (PRAA) Common		None	J	T					
26. RC2 Corporation (RCRC) Common		None	J	T					
27. Fannie Mae (FNM) Common	A	Dividend	J	T					
28. Home Depot Inc. (HD) Common	A	Dividend	J	T					
29. Montpelier Re Holdings Ltd (MRH) Common	A	Dividend	J	T					
30. Neenah Paper Inc. (NP) Common	A	Dividend	J	T					
31. Sanderson Farms Inc. (SAFM) Common	A	Dividend	J	T					
32. United Fire & Casualty Company (UFCS) Common	A	Dividend	J	T					
33. Berkshire Hathaway Inc. Del Class B (BRK.B) Common		None	K	T					
34. Celsstar Corp. (CLST) Common		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000	R =Cost (Real Estate Only)	P4 =More than $50,000,000	T =Cash Market	
	Q =Appraisal	V =Other	S =Assessment		
	U =Book Value		W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Thapar, Amul R	Date of Report 05/26/2007

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Cryptologic Inc. (CRYP) Common	A	None	J	T					
36. Flamel Tech Spon ADR (FLML)		None	J	T					
37. Fording Canadian Coal Trust (FDG) Common	A	Dividend	J	T					
38. Freightcar America Inc. (RAIL) Common		None	J	T					
39. Intel Corp. (INTC) Common	A	Dividend	J	T					
40. Microsoft Corp. (MSFT) Common	A	Dividend	J	T					
41. PW Eagle Inc. (PWEI) Common	A	Dividend	J	T					
42. Buffalo Wild Wings (BWLD) Common		None	J	T					
43. CTRIP.com International (CTRP) Common		None	J	T					
44. Formfactor Inc. (FORM) Common		None	J	T					
45. Inventiv Health Inc. (VTIV) Common		None	J	T					
46. Rofin-Sinar Technologies Inc. (RSTI) Common		None	J	T					
47. Unico Amern Corp. (UNAM) Common		None	J	T					
48. United Health Group Inc. (UNH) Common	A	Dividend	J	T					
49. Advance Cash America (AEA) Common	A	Dividend	J	T					
50. Altria Group Inc. (MO) Common	A	Dividend	J	T					
51. Anheuser Busch Cos. Inc. (BUD) Common	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	P3 =$25,000,001 - $50,000,000 Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Thapar, Amul R	Date of Report 05/26/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. Federated Investors Inc. (FII) Common	A	Dividend	J	T					
53. Pfizer Inc. (PFE) Common	A	Dividend	J	T					
54. Kraft Foods Inc. (KFT) Common	A	Dividend	J	T					
55. Medco Health Solutions (MHS) Common		None	J	T					
56. McDonalds (MCD) Common	A	Dividend	J	T					
57. Bristol-Myers Squibb (BMY) Common	A	Dividend							
58. Harley Davidson (HOG) Common	A	Dividend							
59. Encore Wire (WIRE) Common	A	Dividend							
60. Merck (MRK) Common	A	Dividend							
61. Federal Express (FDX) Common	A	Dividend							
62. Fresh Del Monte Produce (FDP) Common	A	Dividend							
63. Alderwoods Common	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
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FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Thapar, Amul R	Date of Report 05/26/2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Filer received non-reportable salary during the reporting period for services as an employee of the United States Government.

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Thapar, Amul R	Date of Report 05/26/2007

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature _____ **Date** 5/26/07

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		57	089	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		88	894	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			772
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		218	083
Real estate owned-add schedule		375	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		41	635				
Cash value-life insurance							
Other assets itemize:							
TSP Accounts		128	609				
Paypal Inc. Money Market fund			805				
				Total liabilities		218	855
				Net Worth		473	177
Total Assets		692	032	Total liabilities and net worth		692	032
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

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FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
ACN	$ 2060
ACTI	894
AEA	1,636
AZO	1,879
BRK.B	14,450
BUD	1,494
BWLD	3,587
CLST	858
CMG/B	1,493
COLM	1,326
CRYP	1,078
CTRP	3,261
DWSN	2,194
ENH	1,172
ESIO	1,016
FDG	1,380
FII	1,534
FLML	1,417
FNM	1,006
FORM	827
HD	1,516
HSGFX	1,145
INTC	1,711
KFT	497
LYG	1,483
MCD	677
MHS	154
MIDD	2,541
MRH	664
MO	1,561
MSFT	1,742
MUHLX	1,651
NP	1,506
NUAN	2,139
NWY	666
PAC	1,996
PFE	1,373
PRAA	1,311
PWEI	935
RAIL	822
RCRC	1,338
RSTI	696

SAFM	1,277
SCSS	3,160
UFCS	1,306
UNAM	454
UNH	3,200
UTI	1,193
VLCM	1,697
VTIV	1,866
ZUMZ	2,059
Total Listed Securities	$ 88,894

Real Estate Owned
Personal residence $ 375,000

Real Estate Mortgages Payable
Personal residence $ 218,083

AFFIDAVIT

I, Amol R. Thapar, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/29/07
(DATE)

(NAME)

Peggy L. Rose
(NOTARY)

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, DC 20530*

November 9, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the responses of Ronald Tenpas, nominee to be Assistant Attorney General for the Environment and Natural Resources Division, to the written questions received from yourself and Senator Cardin following Mr. Tenpas confirmation hearing on October 24, 2007.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

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Responses to Written Questions for Ronald J. Tenpas
Submitted by Senator Patrick Leahy
Chairman, Senate Judiciary Committee
October 31, 2007

1. Last week, Homeland Security Secretary Michael Chertoff invoked a waiver from the Real ID Act of 2005 that allowed him to bypass several environmental and conservation laws to restart construction on a United States-Mexico border fence in the San Pedro Riparian National Conservation Area in Arizona. Work on the fence had been suspended after a Federal judge ordered the work halted until an assessment of the environmental impact of the project could be carried out.

   A. This is the third time Secretary Chertoff has used the waiver power as to circumvent our Nation's environmental and conservation laws. According to an October 22, 2007 Associated Press article entitled, "Chertoff Waives Laws for Border Fence," Mr. Chertoff exercised his waiver authority on "September 22, 2005 to finish building 14 miles of fence in San Diego, and on January 19 for fencing in the Barry M. Goldwater Air Force range in Arizona." Are you concerned that this pattern of unilaterally waiving Federal conservation laws allows other Federal agencies to circumvent the very environmental and conservations laws that the Environment and Natural Resources Division enforces?

Response: *I am committed to ensuring that the law is followed, particularly the statutes affecting environment and natural resources. I understand, however, that Congress, in passing the Real ID Act of 2005, Pub. L. 109-13, 119 Stat. 231, set out at 8 U.S.C. § 1103 note, concluded in Section 102(c) that the domestic security concerns associated with border fence construction warranted providing the Secretary of Homeland Security with waiver authority when it is "necessary to ensure expeditious construction of the barriers and roads under this section." The waiver authority that Congress has provided the Secretary for construction of roads and barriers attendant only to border security efforts is unique and limited. I do not anticipate that other Federal agencies would attempt to waive inappropriately environmental or conservation laws. I certainly would be very concerned if any Federal agency sought to act outside authority that Congress chose to provide and to thereby improperly circumvent our environmental or conservation laws.*

   B. Given Secretary Chertoff's repeated decisions to use national security statutes to waive Federal environmental and conservation laws, should Congress revisit the waiver authority in the Real Id Act in order to balance securing our Nation's border with protecting our environmental resources? Does it concern you that by exercising this waiver authority, the DHS disregards the views of the States and their role in acting as stewards of the environment?

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Response: *Congress should always carefully balance the protection of our environmental resources with our need to secure our Nation's borders. The waiver authority in the Real ID Act of 2005 is unique and limited. States should, and do, have a strong and real role in enforcing environmental laws.*

2. Since Congress began investigating the scandal involving the firing of eight U.S. Attorneys, the Justice Department has had resignations at its highest levels of leadership, including the Attorney General, Deputy Attorney General, Associate Attorney General, and several Assistant Attorneys General. The crisis of leadership that led to these resignations has taken a heavy toll on the tradition of independence that has long guided the Justice Department and protected it from political influence.

   Your Division has experienced some turbulence in its leadership over the last number of years. The recent scandal of the Division's former Assistant Attorney General Sue Ellen Wooldridge was an unfortunate example of a Federal official who lacked the independence necessary to lead such an important division. What assurances can you give Congress and the American people that, if confirmed, you would commit resist any improper political or industry influences in the enforcement of our Nation's environmental laws?

Response: *I am committed to resisting any improper influences in the enforcement of our Nation's environmental laws. While I am always open to hearing from concerned parties, whatever their interest in particular litigation, ultimately my decisions will be guided solely by what the law and facts dictate.*

3. In July, I sent a letter to then-Attorney General Alberto Gonzales asking whether the circumstances surrounding Ms. Wooldridge's appointment to, and subsequent resignation from, Assistant Attorney General for Environment and Natural Resources raise concerns about potential conflicts of interests. Three months later, I have received no answers to my inquiry. If confirmed, will you commit to ensuring that my July questions on potential conflicts of interest by Ms. Wooldridge are answered and returned within three weeks of your confirmation?

Response: *I have been advised that the Department will make every effort to respond to your letter within three weeks of my confirmation based upon information available within the Department. I have also been advised that some questions may call for information not within the Department.*

4. If confirmed, will you make a commitment to ensure that Congress's questions, pursuant to its oversight authority, are promptly answered?

Response: *Yes. Appropriate oversight is an essential part of our constitutional structure.*

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5. I am troubled by the recent enforcement record of the Environment Division. A May 23, 2007, report by the Environmental Integrity Project (EIP) found that "the Justice Department has become more reluctant to go to court when defendants refuse to clean up their pollution or pay the penalties that they owe." That same report found that the Justice Department's environmental suits have declined by 70 percent. Furthermore, another review conducted by the Transactional Records Access Clearinghouse at Syracuse University found that between 2001 and 2004, criminal prosecutions of environmental violations declined by 28 percent.

   Given the recent scandals in the Department's Environment and Natural Resources Division over the last few years, and its recent record of enforcement, if confirmed, will you make a commitment to restore the integrity of that Division and reverse the trend of declining enforcement actions? If confirmed, what would be your vision and specific plan of action to repair the integrity and enforcement record of the Environment and Natural Resources Division?

Response: *Since joining the Division, I have been very impressed by the commitment and competence of its career staff and believe that their work is characterized by the highest levels of integrity. If confirmed, I look forward to working with them to advance the mission of the Division. My goal as Assistant Attorney General is to enforce the nation's environmental and natural resource laws forcefully and fairly, focusing enforcement on actions that are likely to be most effective in deterring future violations, remedying past harms, eliminating future injury, and protecting the public fisc.*

6. Do you agree that the Environment and Natural Resources Division's priorities should focus on the most prevalent and significant environmental and conservation problems?

Response: *Yes.*

7. Do you agree that the Environment and Natural Resources Division's environmental enforcement should have penalties high enough to motivate companies to comply with the law?

Response: *Yes.*

8. At your hearing, Senator Whitehouse raised the issue of the Department 'suing to settle' in order to allow environmental violators to avoid rigorous enforcement. Can you pledge that the Division, under your leadership, will resist any efforts to strategically settle, which would place the economic interests of environmental violators over meaningful deterrent remedies?

Response: *Yes.*

9. According to the May 2007 EIP report, "the Department filed 157 lawsuits in the last three years of the Clinton Administration, or an average of 52 a year – but

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only 93 in the six years since President Bush took office, or fewer than 16 a year." If confirmed, will you look into the reasons why the Department has filed so cases to enforce Federal environmental laws, and provide an answer to this Committee?

Response: *I am currently reviewing the performance of the Division and would welcome the opportunity, should you desire it, to discuss this with you and your staff. My examination of ENRD performance in this area will also include such qualitative factors as the scope of the filed action (individual, corporate, or national initiative), complexity or novelty, and the nature of the relief obtained.*

10. How should the Environment and National Resources Division go about making civil and criminal environmental enforcement actions a higher priority?

Response: *As a former Assistant United States Attorney in Maryland and Florida and the United States Attorney for the Southern District of Illinois, I have experience with and am committed to affirmative enforcement and defending the interests of the United States. During my tenure, civil and criminal enforcement will be a high priority for the Environment and Natural Resources Division. In that regard, my intent is to lead by example: encouraging, motivating, setting goals, and pushing results. I will work to ensure that career attorneys have adequate resources to bring cases successfully, including support from our client agencies that develop and investigate them for us.*

11. At the hearing, you testified that politics should play no role in any decision that the Justice Department makes. What safeguards will you have in place to ensure that partisan affiliation or any other political factor will not be considered in the hiring of attorneys for your Division?

Response: *I have instructed each of the Division's ten section chiefs and the Deputy Assistant Attorneys General that partisan affiliation or any other political factor will not be a consideration in the filling of any career position in the Environment and Natural Resources Division. I am committed to ensuring that the Division's hiring process incorporates a breadth of views from Division attorneys to eliminate the risk of such improper considerations playing a role.*

12. An October 2005 policy memo from EPA Deputy Administrator Marcus Peacock indicates that the Justice Department and EPA are declining to bring actions against electric utility companies that have violated new source review requirements, unless such violations are counter to proposed regulations that would legalize the majority of activities that EPA and DOJ have been successfully prosecuting. The main justification for the October 2005 memorandum is the claim that EPA will "refocus its resources on other areas that will likely produce significant environmental benefits."

    a. What Clean Air Act-related enforcement lawsuits are EPA and DOJ actively pursuing or considering that would produce more "significant

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environmental benefits" than the NSR enforcement lawsuits mentioned above that targeted violations of the current regulations rather than proposed EPA regulations? If you cannot identify individual defendants in those actions that are being considered, identify the industry sector and the nature of the violations (i.e., specific clean air act statutory and regulatory violations).

Response: *I was not involved in the creation of the EPA memorandum you mention; however, it has not prevented the Department of Justice from litigating on-going cases or filing new cases against utility companies. As you know, we recently settled our largest power plant case, United States v. American Electric Power (S.D. OH), and were joined in that effort by the states of Vermont, New York, New Jersey, Massachusetts, Connecticut, New Hampshire, Maryland and Rhode Island. Under the proposed consent decree, lodged on October 9, 2007, the company will reduce its annual emissions of sulfur dioxide (SO2) and nitrogen oxides (NOx) by 650,000 tons and 160,000 tons, respectively, at an estimated cost of $4.6 billion dollars. American Electric Power has also agreed to pay a $15 million civil penalty and to fund or perform $60 million in mitigation projects to address the adverse effects of its past violations. Division attorneys expended more than 52,000 hours of work to obtain this successful result.*

In 2006 ENRD filed a civil enforcement case alleging Clean Air Act violations against East Kentucky Power Cooperative and in early 2007 against Kentucky Utilities. On September 20, 2007, ENRD lodged a settlement in the District Court for the Eastern District of Kentucky with East Kentucky Power Cooperative which resolved the case filed in 2006, the first case under the Acid Rain provisions of the Clean Air Act, securing NOx emission controls, a penalty of $11.4 million and the retirement of SO2 and NOx emission allowances that will cost the company over $16 million. On September 24, 2007, in a separate case filed earlier, the District Court entered a consent decree in United States v. East Kentucky Power Cooperative (EKPC), in which the company agreed to system-wide tonnage limits on its emissions of SO2 and NOx, reducing annual emissions by approximately 50,000 tons per year. The reductions will be achieved by the installation of controls estimated to cost $650 million. The decree also requires EKPC to pay a civil penalty of $750,000, and to conduct an environmental mitigation project at a cost to the company of at least $5 million. We also continue to litigate pending Clean Air Act claims against other power plants, including the ongoing cases of Duke Energy (M.D. NC), Cinergy (S.D. IN), Kentucky Utilities (E.D. KY), and Alabama Power (N.D. AL).

The Division has continued to make progress on a number of ongoing national enforcement actions. For example, ENRD recently obtained consent decrees with three more petroleum refiners in United States v. Total Petrochemical USA, Inc. (E.D.TX), United States v. Valero Energy Corporation (W.D. TX) and United States. v. Hunt Refining Co. (N.D. AL), as part of our initiative to address Clean Air Act violations within the petroleum refining industry. These three consent decrees, when fully implemented, will result in total penalties of $7.55 million, installation of pollution control updates estimated to cost $317.5 million, annual emissions reductions of more

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than 6,000 tons per year (including more than 2,000 tons of NOx and 2,600 tons of SO2), and mitigation projects costing $1.6 million. With these settlements, the Division's national petroleum refinery enforcement initiative will have addressed more than 92 individual refineries comprising approximately 85% of the nation's refining capacity, and will reduce air pollutants by more than 325,000 tons a year.

The Department of Justice announced on October 25, 2007, that a British Petroleum subsidiary, BP Products North America, Inc., agreed to enter a felony guilty plea to resolve allegations related to an explosion at its Texas City refinery in March 2005 that killed 15 people. In this case, prosecutors from ENRD, working with federal prosecutors in the U.S. Attorney's Office in Houston, successfully obtained a guilty plea to a knowing violation of the Clean Air Act, under which BP Products has agreed to pay $50 million - the largest fine ever assessed under the Clean Air Act - and serve three years of probation during which time the company will be required to implement facility-wide renovations to prevent excess emissions in its Texas City facility and improve its safety. This was the first such conviction ever achieved under Clean Air Act § 112(r), adopted by Congress in 1990, after the explosion in Bhopal, India.

b. I also note that at your confirmation hearing you expressed an interest in identifying new areas in which environmental enforcement is needed. I agree that this is a worthwhile goal and I am confident that you could identify any number of new areas where environmental violations are occurring. But would you agree that there is an existing need for strong continued enforcement of the Clean Water Act and Clean Air Act, violations of which continue and directly affect the health of the environment and the American people?

Response: *Yes. Moreover, as noted above in response to question 12(a), an initiative may well involve the Clean Air Act, but be targeted at a particular industry segment. Thus, new initiatives, depending on the focus, may serve to further enhance a robust on-going Clean Air Act or Clean Water Act enforcement program.*

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SENATOR BENJAMIN L. CARDIN

RESPONSES TO QUESTIONS FOR RONALD TENPAS NOMINEE, ASSISTANT ATTORNEY GENERAL FOR ENVIRONMENTAL AND NATURAL RESOURCES DIVISION

October 31, 2007

1. Maryland passed the Healthy Air Act on April 6, 2006 with the purpose of bringing Maryland into attainment with the National Ambient Air Quality Standards for ozone and fine particulate matter by the federal deadline of 2010. This is the toughest air quality act on the East Coast and requires reductions in nitrogen oxide, sulfur dioxide, and mercury emissions from large coal burning power plants. At full implementation, Maryland expects nitrogen oxide levels to decrease by 75%, sulfur dioxide levels to decrease by 85%, and mercury levels to decrease by 90%.

    a. Maryland has passed this law to comport with the federal deadline. If you are confirmed as AAG for Environment and Natural Resources, what federal focus will you bring to assuring compliance with Clean Air Act requirements in order to meet the 2010 attainment requirements?

Response: *I am committed to ensuring compliance with the law. Although the Environmental Protection Agency has the responsibility for assessing state compliance with national environmental standards, I will do everything in my power to support and assist EPA in fulfilling its statutory responsibilities.*

2. Congress established New Source Review in the Clean Air Act Amendments of 1977 to strengthen measures available to the States and the Federal government for improving air quality. An October 2003 rule change severely hampered existing enforcement cases and the development of new cases. The rule exempts any replacement of any identical parts from NSR guidance, classifying this replacement as routine maintenance.

    a. In your time as Acting Assistant Attorney General, have you prosecuted Clean Air Act violations? If so, what were the cases?

Response: *Yes. I am pleased to be able to tell you that we recently announced a plea agreement for the largest criminal fine ever assessed under the Clean Air Act in the British Petroleum case and the largest Clean Air Act civil enforcement agreement in our history, the American Electric Power (AEP) case; and we have continued to vigorously litigate other pending actions against electric utilities and petroleum refineries. Under the proposed AEP consent decree, the company will be required to take steps to reduce its annual emissions of sulfur dioxide (SO2) and nitrogen oxides (NOx) by 650,000 tons and 160,000 tons, respectively, ensuring that none of these pollutants will reach the Chesapeake Bay by means of air deposition. The consent decree also imposes a*

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requirement that AEP take actions specifically to mitigate harm caused by deposition of nitrogen in the Chesapeake Bay as a result of its illegal emissions. Chesapeake Bay mitigation will be accomplished by actions designed to reduce future nitrogen-laden runoff from agricultural sources, likely in the form of establishing forested riparian buffer zones. In terms of other notable Clean Air Act prosecutions, on June 27, 2007, in the case of United States v. Citgo Petroleum Corp., a jury in the Southern District of Texas convicted the defendants on two Clean Air Act violations for operating two very large open tanks that contained oil without installing the proper emission controls. During my tenure as Acting Assistant Attorney General, the Division has also made other significant gains in improving the nation's air quality by concluding enforcement actions against numerous facilities operating in many diverse industries including United States v. Jupiter Aluminum Corp.(N.D. IN) (consent decree lodged August 13, 2007); United States v. Rhodia (N.D. IN) (consent decree entered July 23, 2007); and United States v. E.I. Du Pont de Nemours & Co. (S.D. OH) (consent decree lodged July 20, 2007).

b. Is it your reading of the statute that EPA can ignore the documented increased emissions from these upgrades and waive the new source review requirements in the Clean Air Act that are now permitted under the new EPA rule?

Response: *The October 2003 rule was invalidated by the D.C. Circuit in New York v. EPA, 443 F.3d 880 (D.C. Cir. March 17, 2006), rehearing en banc denied June 30, 2006, cert. denied 127 S. Ct. 2127 (April 30, 2007), before my arrival in the Division. During my tenure, we have consistently taken the position that all companies must comply with the Clean Air Act and its implementing regulations, including by obtaining permits and installing pollution abatement equipment when required by law.*

3. The Mayor and City Council of Baltimore were parties in *Massachusetts v. EPA*, 549 U.S. ____ (2007), where Massachusetts successfully sued the EPA for not enforcing greenhouse gas emissions.

a. Do you think it is significant that the states have felt forced to go to the Supreme Court to enforce federal environmental law?

Response: *States have broad authority under federal law to bring environmental law suits. Although states and local governments brought the Massachusetts v EPA case that you mentioned, a number of states, including Maryland and Massachusetts, joined with us in support of the petitioners in another significant Clean Air Act Supreme Court case decided on the very same day, Environmental Defense v. Duke Energy Corp. It is not unusual for the United States to be in a variety of litigation postures with states given the multi-faceted obligations of both states and the federal government.*

b. How are you planning to guide the DOJ Environmental and Natural Resources division in response to this ruling?

Response: *Since the Supreme Court's decision, the D.C. Circuit Court of Appeals remanded the action to the Environmental Protection Agency on September 14, 2007, for*

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further proceedings in light of the decision. The Environmental Protection Agency is now developing proposed regulations under the Clean Air Act to address greenhouse gas emissions from new motor vehicles and fuels. The EPA Administrator has indicated target dates for announcing a proposed rule and final agency action. I will ensure that the Division is prepared to vigorously defend any federal rulemaking designed to limit greenhouse gas emissions.

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SUBMISSIONS FOR THE RECORD

Statement of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On Executive and Judicial Confirmation Hearing
October 24, 2007

Today, the Committee holds yet another hearing with a nominee for a senior leadership position at the Justice Department and for four nominees for lifetime appointments to the Federal bench.

I start by thanking and commending Senator Whitehouse for agreeing to chair this hearing. Senator Whitehouse joined the Committee this year, but his interest in environmental protection has been extensive and deeply felt. This hearing brings together a Senator who was a former State Attorney General, a former United States Attorney and long-time environmentalist with the nominee chosen to head the Environment and Natural Resources Division at the U.S. Department of Justice for the remainder of this President's term. We have had difficulty getting straight answers from Mr. Tenpas' predecessors in that important position.

Already under this Administration, we have moved backward, rather than forward, on enforcing our crucial environmental laws. Just yesterday we learned that Homeland Security Secretary Michael Chertoff cited concerns of "national security" in order to bypass several environmental laws and continue construction of a fence in the middle of a nature preserve along the Arizona-Mexico border. It is a shame when our own government believes that protecting national security is somehow incompatible with protecting our Nation's unique public lands or complying with our precious environmental laws.

We will also hear from four more nominees for lifetime appointments to the Federal courts – Joseph N. Laplante to the District of New Hampshire, Reed Charles O'Connor to the Northern District of Texas, Thomas D. Schroeder to the Middle District of North Carolina, and Amul R. Thapar to the Eastern District of Kentucky. All of the judicial nominees have the support of their home-state Senators. I thank Senators Gregg, Sununu, Hutchison, Cornyn, Dole, Burr, McConnell and Bunning for their consideration of these nominees.

This hearing comes at a critical time for our Nation. Today, we face the most serious threat to the effectiveness and professionalism of the Justice Department since Watergate and the Saturday Night Massacre. Under this President, the Department of Justice suffered a severe crisis of leadership that allowed our justice system to be corrupted by political influence. The crisis of leadership that led to these resignations has taken a heavy toll on the tradition of independence that has long guided the Justice Department and protected it from political influence. This crisis has also taken a heavy toll on morale at the Department and in confidence among the American people.

Last week, our Committee began the process of restoring integrity and independence to

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the Department with the confirmation hearing of Michael B. Mukasey, the nominee to be Attorney General. We continue that process today by holding a hearing on the nomination of Ronald Jay Tenpas to be Assistant Attorney General in the Environment and Natural Resources Division at the Department.

The former Assistant Attorney General for that Division, Sue Ellen Wooldridge, had her tenure and subsequent resignation mired in a political controversy regarding possible conflicts of interests. According to press accounts, Ms. Woolridge, while she was still head of the Environment Division, bought a nearly $1 million vacation home with ConocoPhillips Vice President Donald R. Duncan. Nine months later, she agreed to let that company delay instituting pollution controls that would have cost ConocoPhillips over half a billion dollars.

In July, I sent a letter to then-Attorney General Alberto Gonzales asking whether Ms. Wooldridge's actions raise concerns about potential conflicts of interests. Three months later, I have received no answers to my inquiry. I hope that the next head of the Environment Division will make a commitment to ensure that Congress's questions, pursuant to its oversight authority, are promptly answered.

I am also troubled by the recent enforcement record of the Environment Division. A May 23, 2007, report by the Environmental Integrity Project found that "the Justice Department has become more reluctant to go to court when defendants refuse to clean up their pollution or pay the penalties that they owe." The Justice Department's environmental suits have declined by 70 percent. According to the report, "the Department filed 157 lawsuits in the last three years of the Clinton Administration, or an average of 52 a year – but only 93 in the six years since President Bush took office, or fewer than 16 a year." Furthermore, another review conducted by the Transactional Records Access Clearinghouse at Syracuse University found that between 2001 and 2004, criminal prosecutions of environmental violations declined by 28 percent.

It appears that the Environment Division has begun a troubling trend – rather than removing incentives for violators to accept responsibility for their actions, the Department should be using all of its available resources to ensure faithful compliance with the environmental laws that protect all Americans and the quality of the air and water that sustain us.

Given the recent scandals in the Department's Environment and Natural Resources Division over the last few years, and its recent record of enforcement, the Environment and Natural Resources Division could benefit from repair. If confirmed, I hope Mr. Tenpas will make a commitment to restore the integrity of the Environment Division and reverse the trend of declining enforcement actions. Americans deserve to know that those who would pollute our country's precious air and water in the interest of greater profits will have more incentives to think twice about doing so.

Under Mr. Tenpas's acting leadership, the Environment Division has had recent encouraging news. In cooperation with the Justice Department, several Northeastern

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States, including Vermont, won a $4.6 billion settlement with a major polluter in Ohio to redress Clean Air Act violations that have been severely impairing the environment along the Eastern Seaboard. This settlement is estimated to bring about a 1.6 billion pound reduction in pollutants emitted from power plants each year, and will go far toward ending the acid rain that has caused so much degradation of not just our environment but also our cherished landmarks. From the Shenandoah National Park, to the Chesapeake Bay, to the Green Mountains of Vermont, diverse ecosystems will benefit from this settlement.

I commend Mr. Tenpas for his involvement in this settlement, and I hope it signals his commitment to vigorously enforce our Nation's environmental laws. Mr. Tenpas has a distinguished record of public service. If confirmed, I hope he will dedicate his considerable talents to enforcing the Nation's environmental laws faithfully and free of influence from those in the Administration who seek to place partisanship and cronyism over science and the health of all Americans and the environment in which we live.

With today's hearing on four district court nominees, we continue the tremendous progress we have made this year in considering and confirming judicial nominations. This session of Congress, the Committee has reported out 35 lifetime appointments to the Federal bench and the Senate has already confirmed 33 of them, four to the circuit courts. That is the same total number of judicial nominations that a Republican-led Senate confirmed during the entire 1999 session, and more judicial nominations than were confirmed in all of 2005 or 2006 with a Republican Majority. It is 16 more confirmations than were achieved during the entire 1996 session, doubling that session's total of 17, when Republicans stalled consideration of President Clinton's nominations, confirming no circuit nominations.

The Senate has confirmed 21 Circuit Court nominations and 133 total federal judicial nominees in my two years as Judiciary Chairman. During the Bush Presidency, more circuit judges, more district judges, and more total judges have been confirmed while I have served as Judiciary Chairman than during the tenures of either of the two Republican Chairmen working with Republican Senate majorities.

And we are poised to continue making progress. Yesterday, the Senate debated the nomination of Judge Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit. The Senate could easily confirm another judicial nomination on its executive calendar, that of Robert Dow to the Northern District of Illinois. And, this week our Committee has on its agenda the nomination of yet another circuit court nomination.

The Administrative Office of the U.S. Courts lists 45 judicial vacancies. The President has sent us only 22 nominations for these remaining vacancies. Twenty-three of them – about half – have no nominee. Of the 16 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for eight of them, exactly half. Of the 15 circuit court vacancies, six -- more than a third -- are without a nominee. If the President had worked with the Senators from Michigan, Rhode Island, Maryland, California, New Jersey, and Virginia, we could be in position to make even

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more progress.

We will continue moving forward efficiently as long as the President sends us qualified, consensus nominees and we are able to work together. I look forward to hearing from the nominees before us today.

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Opening Statement of Senator Arlen Specter
On the Nomination of Ronald Jay Tenpas
to be
Assistant Attorney General, Environment and Natural Resources Division

October 24, 2007

Ronald Jay Tenpas was nominated to be the Assistant Attorney General for the Environment and Natural Resources Division at the Department of Justice on June 4, 2007. He comes to this position with an extraordinary academic and professional record. In prior meetings with him I have been very impressed with his legal acumen. But first, a little about Mr. Tenpas's family.

Mr. Tenpas and his wife, Kathryn, have two children: twelve-year-old Nathaniel and six-year-old William. Kathryn has a Ph.D. from the University of Virginia and currently is Director of the University of Pennsylvania's excellent Washington, D.C. Semester Program. In this program, fifteen students come to D.C each semester to take classes tought by Penn professors while acquiring "hands on" experience through internships. I have hired several interns from Penn over the years and am impressed by their abilities and dedication.

Mr. Tenpas's Pennsylvania connections do not end there. He is a third-generation Pennsylvanian. He was born and raised in Erie, Pennsylvania—the city where his father was born, raised, and lived all his life, and the city where his grandfather lived for nearly sixty years. He attended public high school in Erie at McDowell High School, where he was captain of the swim team. In fact, he set a number of school swimming records and was the team MVP for all four years.

Following high school, Mr. Tenpas attended Michigan State University on an academic scholarship. He was *Phi Beta Kappa* and won a Rhodes Scholarship as a representative of Pennsylvania. In 1985, he earned a B.A. in international relations from Michigan State with High Honors and, in 1987, he earned a B.A. in philosophy, politics, and economics from Oxford University.

After his stint in England, he attended the University of Virginia School of Law on a three-year full-expense academic scholarship and was editor-in-chief of the law review. He earned his J.D. in 1990 and was inducted into the *Order of the Coif*.

In his first three years after law school he clerked for three different judges, including a Supreme Court Justice. First, he returned to Pennsylvania to clerk for Judge Louis H. Pollak on the U.S. District Court for the Eastern District. He distinguished himself in Judge Pollack's service. The Judge recently told me that he considers Mr. Tenpas as able a lawyer and as fine a human being he has ever had the pleasure of working with. That is high praise indeed.

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After his clerkship in Philadelphia, he clerked for Chief Justice William H. Rehnquist. He then clerked for Judge Howard Holtzmann on the Iran-U.S. Claims Tribunal, The Hague.

Following his tenure as a law clerk, he spent four years as an associate at the Carlton, Fields law firm in Tampa, Florida. At the firm, he did extensive work in the power industry on contract and antitrust matters. Also, he was one of several attorneys who provided *pro bono* representation in a death penalty habeas corpus case.

Since leaving the private sector in 1997, Mr. Tenpas has had an exemplary record of public service in the Department of Justice, in several different capacities. From 1997 to 2003, he was an Assistant United States Attorney—first in the Middle District of Florida and later in the District of Maryland. His docket included both trial and appellate matters and, in 2001, he was promoted to Deputy Criminal Chief and Branch Chief of the Greenbelt, Maryland office. In that role, he supervised fifteen attorneys—reviewing work product and making managerial decisions. He also handled liaison duties with other components of the Department of Justice and various other law enforcement agencies.

Then, in 2003, he was appointed as the United States Attorney for the Southern District of Illinois. He was confirmed by a voice vote in the Senate. As U.S. Attorney, he supervised a seventy-person office. In 2005, his rise through the Department of Justice continued as he became the Associate Deputy Attorney General. In that capacity he helped formulate policy and oversaw a range of Department programs and initiatives—particularly those relating to litigation.

Since May 2007, Mr. Tenpas has served as the Acting Assistant Attorney General for the Environment and Natural Resources Division, the position to which he has now been nominated. He oversees the Division's approximately 420 lawyers and support staff. During his tenure, the Division has concluded a number of cases with favorable outcomes. On October 9, 2007, for example, Mr. Tenpas announced a $4.6 billion settlement with a power company in what the DOJ has called the "single largest environmental enforcement settlement in history."

In short, Mr. Tenpas has an exceptional resume. He is a brilliant lawyer who has dedicated the bulk of his professional career to public service. I look forward to Mr. Tenpas's testimony today and hope the Senate will promptly take up consideration of the nomination.

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NOMINATION OF ONDRAY T. HARRIS, TO BE DIRECTOR, COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE; DAVID W. HAGY, TO BE DIRECTOR OF THE NATIONAL INSTITUTE OF JUSTICE, DEPARTMENT OF JUSTICE; SCOTT M. BURNS, TO BE DEPUTY DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT; CYNTHIA DYER, TO BE DIRECTOR OF THE VIOLENCE AGAINST WOMEN OFFICE, DEPARTMENT OF JUSTICE; AND NATHAN J. HOCHMAN, TO BE AN ASSISTANT ATTORNEY GENERAL, TAX DIVISION, DEPARTMENT OF JUSTICE

TUESDAY, DECEMBER 18, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, Pursuant to notice, at 10:04 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, presiding.

Present: Senator Hatch.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. The committee will come to order.

First, let me thank Chairman Leahy for giving me the opportunity to chair today's hearing. I want to thank all of our nominees and their families for being here today. We appreciate all of your public service, particularly for the families. We know it's a sacrifice when your family member is called upon to do all this public service, and a lot of time is not spent at home. We appreciate the commitments that are made by the entire family.

Today the committee holds a confirmation hearing on four Department of Justice nominees, and one nominee for the Executive Office of the President: Ondray Harris, to be Director of Community Relations Service; David Hagy, to be Director of the National Institute of Justice; Scott Burns, to be the Deputy Director of the National Drug Control Policy; Cynthia Dyer, to be Director of the

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Violence Against Women Office; and Nathan Hochman, to be Assistant Attorney General for the Tax Division of the Department of Justice.

I am pleased that the committee is holding this hearing in order to review the nominees for these important positions at the Department of Justice. It is very important that we restore the leadership, professionalism, and independence to all areas within the Department of Justice.

Each of these agencies and offices we are reviewing today hold an important role in American society. The Community Relations Service division is the Department of Justice peacemaker for community conflicts and tension arising from differences of race, color, and national origin. Created by the Civil Rights Act of 1964, CRS is the only Federal agency dedicated to assist State and local units of government, private and public organizations, and community groups with preventing and resolving racial and ethnic tensions, incidents, and civil disorder, and restoring racial stability and harmony.

Today, however, it is a great sadness that our country has seen a rash of events involving the hanging of nooses in this country. These events are a painful reminder of just how far we have to go. I have been disappointed by the Department of Justice's recent lack of attention to what has become an epidemic of hate crimes and intimidation occurring nationwide, from Jena, Louisiana to College Park, Maryland.

The National Institute of Justice is charged with researching crime and control of Justice issues. NIJ provides objective, independent, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the State and local levels. One challenge the NIJ will have to address is the recent rise of gangs and gang activities in the United States.

The Violence Against Women Office is charged with reducing violence against women and to administer justice for, and strengthen services to, all victims of domestic violence, dating violence, sexual assaults, and stalking.

The National Drug Control Policy is in the Executive Office of the President. It establishes policies, priorities, and objectives for the Nation's drug control programs. The goals of the program are to reduce illicit drug use, manufacturing and trafficking, drug-related crime and violence, and drug-related health consequences.

We have a serious problem with drug abuse in America. Just last week, we learned of more examples of drug abuse by our role models in professional baseball. Over the past year, the committee has passed legislation to regulate on-line pharmacies, and it has held a hearing on the use of electronic prescriptions of controlled substances by doctors.

Lastly, the Tax Division of the Department of Justice is responsible for representing the United States and its officers in most civil and criminal litigation that concerns or relates to the Internal Revenue laws. The Division works closely with the Treasury Department and the Internal Revenue Service. Its pursuit of tax fraud and tax evasion cases results in a greater return of funds to the Treasury than its expenditures.

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Once again, I want to thank all the witnesses for being here today.

We do look forward to your testimony. We will start, first, with our colleague from Minnesota, the Honorable Norm Coleman. It is a pleasure to have Senator Coleman before our committee.

PRESENTATION OF NATHAN J. HOCHMAN, ASSISTANT ATTORNEY GENERAL TAX DIVISION, DEPARTMENT OF JUSTICE BY HON. NORM COLEMAN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator COLEMAN. Thank you, Mr. Chairman.

Mr. Chairman, I have the great pleasure today of introducing one of the nominees. Just a brief note beforehand.

Before I had the pleasure to serve in elected office, before I got elected the mayor of St. Paul in 1993, I had spent 17 years in the Attorney General's Office in the State of Minnesota. I had been head of the Criminal Division and worked closely with the Justice Department and really understand the important work that we do together.

It is truly an honor to be here today introducing my friend, Nathan Hochman. One of the most important responsibilities of the U.S. Senate is clearly laid out in Article 2 of the Constitution. It says our job as U.S. Senators is to offer "advice and consent" over all nominations, and in doing so I believe it is our responsibility to find the best possible public servant to do the job.

Today, I am hopeful that we will fulfill that important duty by approving the nomination of Nathan Hochman to the next Assistant Attorney General for the Tax Division. Nathan has had an exemplary career, from his education at Brown University and Stanford Law, all the way to his current position as principal at Hochman, Salkin, Rettig, Toscher & Perez, P.C., in Beverly Hills, California.

He has already demonstrated a tireless commitment to public service. He has vigorously pursued opportunities to serve his country through the Federal judicial system and has then gone above and beyond the call of duty, to be awarded and honored for his contribution and skills. His awards include the Inspector General's Award of Excellence, U.S. DOJ's Award for Superior Performance as an Assistant, and the Federal Law Enforcement Officers Association Prosecutorial Award.

Moreover, not only does Mr. Hochman have an excellent overall background in both prosecution and defense of the law, his expertise in tax law will be a tremendous asset to the Department. He's the author of several publications on the topic which appeared in leading journals, such as the Journal of Tax Practice and Procedure and Los Angeles Lawyer. As Assistant United States Attorney in the Central District of California, he was involved in over 20 Federal District Court trials, many dealing with financial and tax-related crimes.

Finally, most notably, Nathan's leadership skills are beyond reproach and have been demonstrated in several capacities. He confidently and adeptly ran the L.A. Disaster Fraud Task Force and the Environmental Crimes Task Force. He has also taken on lead-

ership roles in numerous nonprofit organizations, dedicating his time and energy to the community at large.

I strongly believe that Nathan Hochman would serve our country as Assistant Attorney General for the Tax Division with the same integrity, expertise, and outstanding commitment as he has exhibited over the course of his lifetime, and he has my highest recommendation and respect. I know Mr. Hochman personally. He is a very decent man, Mr. Chairman, skilled, of great character and great ability, and I'm very pleased to present his nomination to you today.

Senator CARDIN. Senator Coleman, we very much appreciate your recommendation and your introduction of Mr. Hochman. Thank you very much for being here.

I would now ask if the nominees would come forward. Once again, Ondray Harris, David Hagy, Scott Burns, Cynthia Dyer, and Nathan Hochman. If you all would just remain standing. The tradition of the committee is to swear in our witnesses, so if you would all raise your right hand.

[Whereupon, the witnesses were duly sworn.]

Senator CARDIN. Your entire statements will be made part of the record. I would ask that you would give a brief introduction, and perhaps during that time, also introduce your families, the members that are here. That will be helpful to all of us.

We'll start with Ondray Harris. Mr. Harris is the Acting Director for the Community Relations Services at the Department of Justice. Prior to his appointment, he was Deputy Chief in the Employment Litigation Section of the Civil Rights Division at the Department of Justice. Mr. Harris was also an Assistant Attorney General at the Virginia Attorney General's Office from 1999 to 2004.

Outside of the public sector, Mr. Harris served as partner in the Claire, Ryan law firm in Richmond, Virginia, where he worked on labor and employment issues. Mr. Harris holds a bachelor of arts degree from Hampton-Sidney College, and received his law degree from Washington & Lee.

Mr. Harris, it is a pleasure to have you before our committee.

STATEMENT OF ONDRAY T. HARRIS, NOMINEE TO BE DIRECTOR, COMMUNITY RELATIONS SERVICE, U.S. DEPARTMENT OF JUSTICE

Mr. HARRIS. Thank you, Chairman Cardin.

First, I'd like to thank President Bush for nominating me. I'd like to thank Attorney General Mukasey for his confidence and support. I'd like to thank Senator Webb and Senator Warner from the Commonwealth of Virginia, my home State, for their support. I'd like to thank Chairman Leahy for calling for these hearings, and I would like to thank Chairman Cardin for presiding over those hearings. I would like to thank the staff of CRS.

I don't have family here today, but I do have some loyal friends in support here. Kristin Patterson is here today, and a friend of mine from the Civil Rights Section, Jodi Danis. Thank you.

Senator CARDIN. Our next witness would be David Hagy. David Hagy served as the Acting Principal Deputy Director of the National Institute of Justice of the U.S. Department of Justice. Prior to his nomination, Dr. Hagy served as the Deputy Assistant Attor-

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ney General for the Department's Office of Justice Programs. In that role he was responsible for policy related to the Nation's capacity to prevent and control crime, improving the criminal and juvenile justice systems, and assisting victims of crime through partnership between the Federal, State, and local governments.

Before joining the Department of Justice, Dr. Hagy served as Director of Local Coordination in the Office of State and Local Government Coordination at the U.S. Department of Homeland Security. He worked extensively with national organizations that represent State and local governments, police, fire, and emergency management professionals.

Dr. Hagy holds a bachelor of science degree in economics from Texas A&M University, a master of arts and Ph.D. in political science from Tulane University.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).
   Ondray Toney Harris

2. **Position**: State the position for which you have been nominated.
   Director of Community Relations Service

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.
   950 Pennsylvania Ave. NW – PHB, Washington, DC 20530 (Office)
   Alexandria, Virginia (Home)

4. **Birthplace**: State date and place of birth.
   I was born in Richmond, Virginia, in 1965.

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.
   I am single and have no children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
   Washington & Lee School of Law 1993-1996, Juris Doctorate received in 1996.
   Hampden-Sydney College 1986-1989, B.A. received in 1989.
   Ferrum College 1984-1986, A.A. received in 1986.

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.
   05/07- Present Acting Director of Community Relations Service, 600 E Street, NW, Suite 600, Washington, DC 20530

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06/05 – 05/07 and 06/04 – 09/04 Deputy Chief in the Employment Litigation Section of Civil Rights Division, at U.S. Department of Justice, 950 Pennsylvania Ave. NW – PHB, Washington, DC 20530

09/04 – 06/05 and 02/04 – 05/04 Partner at LeClair Ryan, 951 E. Byrd Street, Richmond, VA 23219

03/99 – 01/04 Assistant Attorney General at the Virginia Attorney General's Office, 900 E. Main St. Richmond, VA 23219

03/98 – 03/99 Attorney at Krumbein & Associates, 1650 Willow Lawn Drive, Richmond, VA 23230

07/97 – 03/98 Sports & Fitness Desk Clerk at the Jewish Community Center, 5403 Monument Ave., Richmond, VA 23226

09/96 – 11/96 Case Clerk at Hunton & Williams, 951 E. Byrd Street, Richmond, VA 23230

01/96 – 05/96 Intern at Virginia State Bar, 707 East Main Street, Richmond, VA 23219

07/95 – 08/95 Summer Intern at the Virginia Attorney General's Office, 900 E. Main St. Richmond, VA 23219

06/95 – 08/95 Summer Associate at Rosman & Associates, 4912 West Broad Street Richmond, VA 23230

08/94 – 08/94 Summer Clerk at McGuire, Woods, Battle & Boothe, 901 East Cary St. Richmond, VA 23219

07/94 – 03/98 Law Clerk at Flax, Embrey & Stout (defunct), 4112 East Parham Road, Richmond, VA 23228

03/90 – 5/93 Researcher at Signet Bank (now part Wachovia Bank), Richmond, VA 23219

05/85 – 03/90 Kelly's Services (Temp Agency), 9201 Arboretum Pkwy, Ste 110, Richmond, VA 23230.

8. Military Service and Draft Status: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.
I have had no military service.

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9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.
Lee-Jackson Financial Aid Scholarship at Washington & Lee
Service Award from the Virginia Attorney General

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.
None.

11. **Bar and Court Admission**:

    a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.
    Virginia State Bar October 1998 – to the present.
    I have no lapse in membership.

    b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.
    Virginia State Courts in October 1998
    U.S. District Court for the Eastern District of Virginia in 2000
    U.S. District Court for the Western District of Virginia in 2000
    U.S. Bankruptcy Court for the Eastern District of Virginia in 1998
    U.S. Supreme Court in 2004.

12. **Memberships**:

    a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.
    Capitol Club (fitness/professional club) 2000-2004.
    See the by-laws attached.

    b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or

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religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.
They do not discriminate on the basis of race, sex, or religion.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.
"Do you know how the Sarbanes-Oxley Act protects whistleblowers?" Printed in *Virginia Employment Law Letter* March 2005.

"Steps you can take to retain, preserve electronic documents." Printed in *Virginia Employment Law Letter* November 2004.

See the four (4) copies of each article attached.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.
None.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.
None.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.
None.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.
None.

14. **Public Office, Political Activities and Affiliations**:

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a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.
Assistant Attorney General of Virginia. I was appointed to the AAG position by Mark Earley and Jerry Kilgore.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

George Allen 2006 (via the RNC, in the Richmond, VA headquarters as election monitor). This was done while I was on annual leave from DOJ and in accordance with the Hatch Act. See 5 CFR 734.205 and 734.401. In addition, I checked with the Chief of the Section and relied on the U.S. Office of Special Counsel case summaries on the issue.

Bush-Cheney 2004 (door-to-door campaigning in Richmond).

Eric Cantor 2001 (door-to-door campaigning).

Bush-Cheney 2000 (door-to-door/get out to vote initiative, sign placement).

George H. W. Bush 1992 (distribute brochures and door-to-door campaigning).

15. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
No

ii. whether you practiced alone, and if so, the addresses and dates;
No

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

05/07- Present Acting Director of Community Relations Service, 600 E Street, NW, Suite 6000, Washington, DC 20530

06/05 – 05/07 and 06/04 – 09/04 Deputy Chief, in the Employment Section, of the Civil Rights Division, at U.S. Department of Justice, 950 Pennsylvania Ave. NW – PHB, Washington, DC 20530

09/04 – 06/05 and 02/04 – 05/04 Partner at LeClair Ryan, 951 E. Byrd Street, Richmond, VA 23219

03/99 – 01/04 Assistant Attorney General at the Virginia Attorney General's Office, 900 E. Main St. Richmond, VA 23219

03/98 – 03/99 Attorney at Krumbein & Associates, 1650 Willow Lawn Drive, Richmond, VA 23230

09/96-11/96 - Case Clerk at Hunton & Williams, 951 E. Byrd Street, Richmond, VA 23230.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.
Civil Rights law (Title VII and USERRA) 06/05-05/07 and 06/04 – 09/04

Labor and Employment Law 2000 – 2004

Creditor's Right/Bankruptcy 1998 – 2000

ii. your typical clients and the areas, if any, in which you have specialized.
My typical clients were state government agencies, corporations, and the United States.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
70% of my practice was litigation, and I appeared in court frequently.

i. Indicate the percentage of your practice in:
1. federal courts; **30%**
2. state courts of record; **65%**
3. other courts **5%.**

ii. Indicate the percentage of your practice in:
4. civil proceedings; **100%**
5. criminal proceedings **0%**.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
Approximately 100-120 cases.
In approximately 95% of the cases, I was sole counsel or chief counsel. In 5% of the cases, I was either co-counsel or associate counsel.

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i. What percentage of these trials were:
   1. jury; **10%**
   2. non-jury **90%**.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   a. the date of representation;

   b. the name of the court and the name of the judge or judges before whom the case was litigated; and

   c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Williams v. ICM, Inc., et al, 3:03-cv-00896-RLW. Judge Dennis Dohnal. Eastern District of VA (Richmond). (Civil Rights Act of 1964, as amended, Title VII race case) plaintiff was *pro se*. I was sole counsel for Defendant. Plaintiff alleged that his employer discriminated against him by failing to promote him because of his race (black). Plaintiff filed a default judgment, and Defendant retained me as counsel, and I moved to have the default set aside. The Court set aside the default judgment, and after deposing the Plaintiff, I filed a summary judgment motion. The Plaintiff agreed to dismiss the case and Defendant did not seek cost. The Court entered the dismissal. Time of representation: May - October 2003.

Bratschi v. Virginia Department of Military Affairs, 3:03-cv-633, U.S. District Court for the Eastern District of VA (Richmond). (Title VII of Civil Rights Act of 1964, as amended race and gender discrimination, §1983 claim, and Va. Code §§ 2.2-3000 *et seq.*) Judge Richard Williams. Plaintiff was pro se, at 23500 Cutbank Road McKenney, VA 23872. I was chief counsel for Defendant. My co-counsel was Anthony P. Meredith of the Virginia Attorney General's Office, (804) 786-0969, at 900 E. Main St., Richmond, VA 23219. Plaintiff's employment was terminated. After receiving a Right-to-sue from the EEOC, she filed a Title VII race and gender complaint. I filed a motion to dismiss based on the Rooker-Feldman doctrine. In my motion to dismiss, I argued that since Plaintiff previously raised and adjudicated her claims of race and gender discrimination, in a state proceeding before an Administrative Law Judge, pursuant to Rooker-Feldman doctrine, the federal district courts are divested of subject matter jurisdiction to hear the matter. I argued to hold otherwise would confer appellate jurisdiction on

federal courts that only have original jurisdiction unless expressly provided for by statute. The Court heard oral argument on the motion to dismiss, agreed with my argument, and issued a memorandum opinion dismissing the case. Date of representation: June 2003 – November 2003

Lomax v. Commonwealth of Virginia Public Defenders Commission, John H. Underwood, III, in his official capacity as City of Portsmouth Public Defender, 2:00-cv-474 (Title VII race and gender discrimination case and 1983 claim) U.S. District Court for the Eastern District of VA (Norfolk) (Civil Rights Act of 1964, as amended, Title VII race and gender case) Judge William T. Prince. I represented the Defendants. I did discovery, argued motions, and examined witnesses, and assisted with other trial strategy. Guy Horsley co-counsel (804) 786-0969, at 900 E. Main St., Richmond, VA 23219, and Carolyn P. Carpenter, counsel for Plaintiff, at (804) 643-1003, 2119 E. Franklin Street, Suite 100, Richmond, VA 23223. This was a failure to promote case, where the plaintiff, a lawyer, alleged that she did not get a promotion because of her race and gender. The lawyer who received the promotion was a white female. The jury returned a defense verdict, and the Court award cost to Defendant the Commonwealth of Virginia Public Defenders Commission. Date of representation: November 2003 – February 2004

Goodwyn v. Virginia Lottery, et al., 3:02 -cv-00463-HEH, U.S. District Court for the Eastern District of VA (Richmond) (Civil Rights Act of 1964, as amended, Title VII race case) Judge Henry Hudson. I represented Virginia Lottery. I did discovery, argued motions, and assisted with other trial work. My co-counsels were Anthony P. Meredith, and Paul Thompson of the Virginia Attorney General's Office, (804) 786-0969, at 900 E. Main St., Richmond, VA 23219. Hayden Fischer was counsel for plaintiff, at (804) 648-0064, 416 W. Franklin St., Richmond, VA 23218-0507. Employer terminated plaintiff for improperly touching multiple women. Plaintiff alleged that his employment was wrongfully terminated because of his race (black). At trial, after the Plaintiff put on his case in chief, the Defendant made a Rule 50 (motion for judgment), which the Court granted. Time of representation: May - December 2004.

QSP, Inc. v. Rene Ulloa, Henrico County Circuit Ct. (Virginia). Judge Catherine Hammond. (breach of employment contract case) I represented the Plaintiff QSP, Inc. with co-counsel David Nagle, John Barr, John Fitzpatrick of LeClair Ryan (804) 783-2003, at 951 E. Byrd St., Eighth Floor, Richmond, VA 23219 for the Plaintiff. Thomas Slater, Jr. for defendant, at Hunton & Williams, at 951 E. Byrd St., Richmond, VA 23219-4074, telephone (804) 788-8200. Rene Ulloa worked as a QSP sales representative. On April 14, 2003, Ulloa resigned from QSP and went to work for Great American Opportunities, Inc. All employees agreed that they would not compete with QSP or solicit QSP's customers for 12 months after leaving QSP. The contract also stated that any sales representative who violated the contract would be responsible for QSP's attorneys' fees in any lawsuit involving the agreement. At trial, the jury found a breach of contract. The jury awarded QSP $691,099 in legal fees. On appeal, the Supreme Court of Virginia ruled that Ulloa was bound by the contract and remanded to circuit

court as to proper calculation of fees. *Ulloa v. QSP, Inc.,* Supreme Court of Virginia, No. 050095 (01/13/06). Time of representation: November 2004 – April 2005.

Allen v. College of William & Mary, 245 F. Supp. 2d 777, (E.D.Va. Jan. 27, 2003) (Americans with Disabilities Act (ADA) (804) U.S. District Court for the Eastern District of VA (Norfolk) (Civil Rights Act of 1964, as amended, Title VII race case, as amended, and 1983 claim) Oscar Blayton, (757) 229-1242, at 150 Ron Springs Dr., Williams, VA 23187, counsel for plaintiff. Judge Robert G. Doumar. As I was sole counsel for Defendants, I made all arguments and wrote all briefs. A black female employee of a Virginia public college sued her supervisor, the college and the Commonwealth of Virginia, claiming she was subject to disparate treatment amounting to racial discrimination in violation of Title VII, discrimination on basis of disability in violation of Americans with Disabilities Act (ADA), and retaliatory discrimination under Title VII, ADA, and § 1983. Defendants moved to dismiss. Adopting report and recommendation of Bradford F. Stillman, United States Magistrate Judge, the District Court held that: (1) complaint did not state cause of action under Fourteenth Amendment or Title VI of Civil Rights Act; (2) Eleventh Amendment barred ADA claims for money damages against college and Commonwealth, and supervisor was immune from personal liability for damages under ADA regardless of whether she was being sued in her individual or official capacity; (3) Eleventh Amendment barred ADA claims for back pay against all defendants, and for reinstatement against college and Commonwealth, but employee could pursue reinstatement claim against supervisor in her official capacity, provided that supervisor had authority to issue that form of injunctive relief; (4) employee was not foreclosed from simultaneously pursuing claims under § 1983 and Title VII; and (5) Eleventh Amendment barred § 1983 claim against college and Commonwealth, but not against supervisor in her official capacity for injunctive relief in form of reinstatement, provided that she had the authority to issue same, or against supervisor in her individual capacity for money damages, subject to later determination of issue of qualified immunity. Motion granted in part and denied in part. Defendant filed a motion for summary judgment, but before the court ruled on the motion to dismiss Plaintiff agreed to dismiss and Defendant agreed not to seek cost. Time of representation: May 2002 – January 2003.

Virginia Dept. of State Police v. Barton, 573 S.E. 2d 319, (Va.App. Dec. 17, 2002) (government employee discipline case under VA Code §§2.2-3000 - 3006) Manuel A. Capsalis, at (703) 358-9620 Capsalis, Bruce, & Reasser, PLC, 2200 Wilson Blvd., Suite 800, Arlington, VA 22201, for the Appellee. Panel of Judges was Larry Elder, Rosemarie Annunziata, and G. Steven Agee. As sole counsel, I represented the Virginia State Police throughout the litigation. I made all oral arguments and wrote all briefs. Barton, a state trooper, sought judicial review of administrative hearing officer's decision reducing trooper's three-day suspension by the Virginia Department of State Police (VDSP) to the lesser sanction of a written notice with no suspension. The Circuit Court, Fairfax County, Judge David T. Stitt reversed the hearing officer's decision, and the Commonwealth appealed. The Court of Appeals, held that, as a matter of first impression, a VDSP general order, stating that

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all criminal cases coming to the attention of a sworn employee must be given the necessary attention to be brought to a logical conclusion, was not a "law," for purposes of statute under which a hearing officer's decision regarding a state employee grievance is subject to judicial review to determine if it is contradictory to law. Circuit Court was reversed, and the hearing officer's decision was reinstated. Time of representation: July 2002 – December 2002.

Rush v. Virginia Dept. of Transp., 208 F. Supp. 2d 624, (W.D.Va. June 18, 2002) U.S. District Court for the Western District of VA (Charlottesville) (Civil Rights Act of 1964, as amended, Title VII sex discrimination case) Judge Norman Moon. John E. Davidson, at (434) 972–9600, Davidson & Kitzmann, PLC, 211 E. High St. Charlottesville, VA 22902, counsel for plaintiff. I performed discovery, argued motions, examined witnesses at trial. My co-counsel was Guy Winston Horsley, Jr., Office of the Virginia Attorney General's Office, (804) 786-0969, at 900 E. Main St., Richmond, VA 23219. We represented the Defendant. Plaintiff, a candidate for employment, brought § 1983 and Title VII action against the Virginia Department of Transportation, alleging sex discrimination. The jury returned a verdict for the Defendant. After trial, candidate moved for new trial. The District Court held that exclusion of evidence of supervisor's allegedly sexist comments, statements, and actions was error warranting new trial. After the judge awarded a new trial, the parties settled the matter. Time of representation: February 2002 – June 2005.

Taylor v. Virginia Dept. of Correction, 177 F. Supp. 2d 497, (E.D.Va. Dec 17, 2001)U.S. District Court for the Eastern District of VA (Richmond)(Civil Rights Act of 1964, as amended, Title VII racial harassment and race discrimination case). Harrison B. Wilson, III, counsel for plaintiff at (804) 698-7378, 700 E. Main St., Suite 1638, Richmond, VA 23219. Judge Dennis Dohnal. An African-American employee of the state's department of corrections brought Title VII action alleging that he was discriminated against by being subjected to hostile work environment and that he was retaliated against by involuntary job transfer for having pursued authorized grievance procedure. On employer's motion for summary judgment, the District Court United States Magistrate Judge, held that: (1) supervisor's abuse of employee was not sufficiently pervasive to constitute hostile work environment, and (2) transfer was not "adverse employment action" sufficient to support retaliation claim. The court granted my motion for summary judgment. Plaintiff appealed to the Fourth Circuit. Taylor v. Virginia, 32 Fed. Appx. 123, (4th Cir. (Va.) Apr. 16, 2002) Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Alphonzo Taylor, Sr., appellant, at 1408 Bull Run Ct. Richmond, VA 23231, was *pro se* at this point. The matter was before Judges Karen Williams, M. Blane Michael, and Robert King, *per curiam*. Taylor appealed the magistrate judge's order granting summary judgment in favor of Appellee on Taylor's hostile work environment and retaliation claims. The Court reviewed the record and the magistrate judge's opinion and found no reversible error. Therefore, the Court affirmed on the reasoning of the magistrate judge. The Court dispensed with oral argument because the facts and legal contentions were adequately presented in the materials before the

court and concluded that argument would not aid the decisional process. Time of representation: July 2001 – April 2002.

Chaffins v. Virginia Dept. of Corrections, 2001 WL 530808, (W.D.Va. May 10, 2001) U.S. District Court for the Western District of VA (Roanoke) (Age Discrimination in Employment Act (ADEA) of 1967, as amended case). Thomas C. Chaffins, *pro se*, at (606) 832-2681, Goodwater Street, Jenkins, KY 41537. Judge James P. Jones. Plaintiff alleged that he could not get a job at the state prison because of his age. As sole counsel, I filed a Motion to Dismiss, which pointed out the plaintiff only named the Commonwealth and not an official, in his/her official capacity for the Commonwealth. Therefore, I argued his claim was barred by the 11th Amendment's sovereign immunity. The Court granted my motion. Notwithstanding, the Court granted the plaintiff leave to file an amended complaint, if filed within thirty days thereof. The Court wrote, however, that if the plaintiff did not file such an amended complaint within that time, his action would be dismissed. The plaintiff stated that he believed that he could not go up against the Commonwealth and the Attorney General's Office successfully and filed no amended complaint. Time of representation: February 2001 – June 2001.

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As Deputy Chief, in the Employment Litigation Section ("ELS"), at the Department of Justice, I managed the line attorneys, paralegals, and staff. Usually, there are approximately 30-35 attorneys and 15 to 20 other personnel in the Section. Primarily, my supervisory role required my review of employment discrimination investigations conducted by the Section's attorneys pursuant to Title VII of the Civil Rights Act of 1964, as amended, and review of Uniformed Services Employment and Re-employment Rights Act ("USERRA") matters. My review extended to all court filings, memorandum, letters, communications to opposing counsel, and documents drafted by the attorneys. I also conducted performance reviews of attorneys, aided them in legal strategy and difficult problems that developed in their litigation. As the reviewer, I also assisted in training attorneys in the methods of practicing law. Further, I performed legal research and writing on complicated topics in the employment law area, as well as prepared and traveled with the attorneys for important court appearances. I met with private minority organizations to help form better relations with those organizations and the Department of Justice. In addition, as Deputy Chief, I traveled the country in an ELS outreach initiative to the EEOC. In the ELS outreach with the EEOC, I visited the EEOC's District offices to meet with the District Directors, the Regional Attorneys, and the EEOC investigators. At these meeting, I gave presentations explaining the ELS structure and what happens to the cases that it receives from the EEOC. In addition, I discussed with the EEOC personnel how the two could better assist each other.

I have not performed any lobbying activities.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.
None.

19. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.
On July 6, 2006, I enrolled in the Thrift Savings Plan of the federal government. The amount in the Plan currently is $1404.69. The anticipated receipt of income from the Plan is approximately 2027.

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.
No.

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)
See SF-278.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).
See Net Worth Statement.

23. **Potential Conflicts of Interest**:

    a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. **None.** Explain how you would address any such conflict if it were to arise.
    If a conflict of interest were to arise, I would consult with the ethics officials of the Department of Justice, and follow their guidance.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.
    In the event of a potential conflict of interest, I will consult with the ethics officials of the Department of Justice, and follow their guidance.

24. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of

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professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

In the past, via the Richmond Women's Bar Association, I was a mentor in the Richmond public schools. In this mentoring program, I went into Richmond public school to meet with students monthly and discussed the law, explained the legal system, and talked about legal opportunities. In addition, I would help them with other issues and concerns such as homework and problems outside the classroom.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks **$51,300.00**	x			Notes payable to banks-secured **Car loan $23,000.00**	x		
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule **Fidelity Investments IRA $3,653.00**	x			Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	x		
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule **Mortgage $480,000.00 Wells Fargo**	x		
Real estate owned-add schedule **$700,000.00 Residence in Alexandria, VA**	x			Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property				**SallieMae school loans $66,500.00**	x		
Cash value-life insurance **$685,000.00**	x						
Other assets itemize:							
				Total liabilities $569,500.00	x		
				Net Worth	x		

47206.463

				$870,453.00			
Total Assets $1,439,953.00				Total liabilities and net worth $1,439,953.00	x		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor No	x			Are any assets pledged? (Add schedule) No			
On leases or contracts No	x			Are you defendant in any suits or legal actions? No			
Legal Claims No	x			Have you ever taken bankruptcy? No			
Provision for Federal Income Tax No	x						
Other special debt No	x						

47206.464

U.S. Department of Justice

Justice Management Division

Departmental Ethics Office

Washington, D.C. 20530

MAY 2 9 2007

Robert I Cusick
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Mr. Cusick:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Ondray Harris, who has been nominated by the President to serve as Director, Community Relations Service, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. Section 208, requires that Mr. Harris recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute, has a financial interest. Mr. Harris has been counseled and has agreed to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests.

We have advised Mr. Harris that because of the standard of conduct on impartiality at 5 CFR 2635.502, he should seek advice before participating in a particular matter involving specific parties which he knows is likely to have a direct and predictable effect on the financial interest of a member of his household, or in which he knows that a person with whom he has a covered relationship is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Lee J. Lofthus
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

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SF 278 (Rev 01-2006)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209-0001

Date of Appointment/Commencing Hold Office or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Date (Month, Day, Year) ☐
Reporting Individual's Name	Last Name: Harris			First Name and Middle Initial: Cindray T	
Position for Which Filing	Title of Position: Director, Community Relations Service			Department or Agency (If Applicable): The Department of Justice	
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): 950 Pennsylvania Ave., NW, PHB, Washington, DC 20530			Telephone No. (Include Area Code): (202) 514-3862	
Position(s) Held with the Federal Government During the Preceding 12 Months (If Same as Above)	Title of Position(s) and Date(s) Held: Deputy Chief of Employment Litigation at the Department of Justice, July 2005, through present.				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	

Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]	Date (Month, Day, Year): 4/23/07
Other Review (If desired by agency)	Signature of Other Reviewer: [signature]	Date (Month, Day, Year): 5/24/07
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [signature]	Date (Month, Day, Year): 5/25/07
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities): The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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APR 2 8 2007

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Reporting Individual's Name
Jayne Doupe, T

SCHEDULE A

Page Number
2 of 5

Assets and Income

PART A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period or which generated more than $200 in income during the reporting period, together with up to a type.

For yourself, your spouse, and dependent children, report each source, and brief description, of earned income (e.g., salary, fees, honoraria) exceeding $200 (other than from the United States Government). For your spouse, report the source but not the amount of earned income of more than $1,000 except report the actual amount of any honoraria over $200 of your spouse).

None ☐

| | Valuation of Assets at close of reporting period PART B | | | | | | | | | | | | | | | Income: Type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item PART C | | | | | | | | | | | | | | |

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Hanks, Gregory T		3 of 9

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)													
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of Divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government, given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Report by Individual's Name
Harris, Gregory, T

Page Number
4 of 5

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances, and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☒

Creditor's Name and Address	Type of Liability	Date Incurred	Interest Rate	If applicable	Category of Amount or Value ($)								
Example: First Bank, Washington, DC, 123 N.W. Washington St.	Mortgage on rental property, Delaware Townhouse, Note	1993 1983	8% 30yr	25 yrs 10 months	$10,000 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
1															
2															
3															
4															
5															

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation), (2) continuation of payment by a former employer (including severance payments), (3) leaves of absence, and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☒

Status and Terms of any Agreement or Arrangement	Parties	Date
Example: Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service period ended through 1/98.	Doe Jones & Smith, Hometown, State	7/85
1		
2		
3		
4		
5		
6		

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Reporting Individual's Name	SCHEDULE D	Page Number
Harris, Onclay T		5 of 5

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Mac L. Asan & Rick Lafferson, NY, NY	Investment banking	President	8/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	2/85	1/04
1	LeClair Ryan, Richmond, VA	Law Firm	Partner (non-equity)	09/2004	06/2005
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (Client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	LeClair Ryan, Richmond, VA	Legal services for LeClair's client Reader's Digest
2	LeClair Ryan, Richmond, VA	Legal services for LeClair's client The Virginia Department of Game and Inland Fisheries
3	LeClair Ryan, Richmond, VA	Legal services for LeClair's client ICM, Inc
4	LeClair Ryan, Richmond, VA	Legal services
5		
6		

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Dr. Hagy.

STATEMENT OF DAVID W. HAGY, NOMINEE TO BE DIRECTOR OF THE NATIONAL INSTITUTE OF JUSTICE, U.S. DEPARTMENT OF JUSTICE

Dr. HAGY. Thank you so much for having us today. I know how busy you are, and your staff are, with all the issues. This time of the year, I know you're very busy, so we appreciate you having us.

I want to thank the President and the Attorney General for having confidence in my abilities and nominating me for this position. I additionally want to thank the staff of the National Institute of Justice. I've been there several months, almost a year, and they've worked tirelessly to make changes that we think were needed, and we've done some very good work together and I appreciate their support and work with me.

Most importantly, I want to thank my family. As you said in the introduction, I came to Washington, DC, 5 years ago to work in Homeland Security, then it turned into Justice, then it turned into NIJ, so we've been here probably longer than we've expected. I took them from family and friends, so I want to thank them for their sacrifice as well. My wife Sarah is here, my son Matthew, and my daughter Grace. So I want to thank you.

Again, thank you again for having us today.

Senator CARDIN. Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   David Wayne Hagy

2. **Position**: State the position for which you have been nominated.

   Director, National Institute of Justice (NIJ)

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: 810 7th Street, N.W., Washington, D.C. 20531
   Residence: McLean, Virginia 22101

4. **Birthplace**: State date and place of birth.

   1964; Corpus Christi, Texas

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Sarah Elizabeth (Specker) Hagy
   Senior Attorney
   Continental Airlines, Inc.
   1600 Smith Street
   Houston, Texas 77002

   Dependent children: 2

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   01/1996 - 12/1997 **University of St. Thomas** **Degree: No**
   Houston, Texas

09/1987 - 05/1993 **Tulane University** **Degrees: Ph.D. (05/1993) Political Science**
New Orleans, Louisiana **M.A. (12/1988) Political Science**
(Relocated to Houston, Texas and secured employment in 1991)

09/1982 - 12/1986 **Texas A&M University** **Degree: B.S. (12/1986) Economics**
College Station, Texas

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

12/2006 - Present
Acting Principal Deputy Director
National Institute of Justice
Office of Justice Programs (OJP)
U.S. Department of Justice
810 7th Street, N.W.
Washington, D.C. 20531

09/2005 - 06/2007
Deputy Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice
810 7th Street, N.W.
Washington, D.C. 20531

05/2003 - 08/2005
Director for Local Coordination
Office of State and Local Government Coordination
U.S. Department of Homeland Security
3801 Nebraska Ave., N.W.
Washington, D.C. 20016

09/1997 - 04/2003
Chief of Staff/Policy Coordinator
Harris County Judge Robert Eckels
1001 Preston Avenue, Suite 911
Houston, Texas 77002

01/1996 - 08/1997
Deputy Controller
City Controller Lloyd Kelley
City of Houston
900 Bagby Street
Houston, Texas 77002

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01/1994 - 12/1995	Senior Aide City Council Member Lloyd Kelley City of Houston 900 Bagby Street Houston, Texas 77002
1995	University of Houston - Downtown Lecturer for the Department of Social Sciences One Main Street Houston, Texas 77002
1994	University of Houston Lecturer for the Department of Political Science 4800 Calhoun Road Houston, Texas 77004
05/1992 - 05/1993	Financial Consultant Smith Barney Shearson 717 Texas Avenue Houston, Texas 77002
09/1991 - 12/1991	Campaign Manager Blakemore and Associates 3405 Edloe Street Houston, Texas 77027
1990-1991	Tulane University Instructor of International Relations Department of Political Science 6823 St. Charles Avenue New Orleans, Louisiana 70118
08/1990 - 08/1990	Intern - Office of Congressman Robert Livingston U.S. House of Representatives Rayburn House Office Building Washington, D.C. 20515
08/1988 - 08/1988	Intern Los Angeles Times Times Mirror Company Times Mirror Square Los Angeles, California 90012

47206.424

06/1987 - 08/1987 **Reservations**
Coral Cay Condominium
1419 11th Street
Port Aransas, Texas 78373

01/1987 - 05/1987 **Cashier**
Hilton Hotel
801 University Drive East
College Station, Texas 77840

8. Military Service and Draft Status: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

No military service

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Tulane University
Teaching Assistantship, 1990-1991
Graduate Fellowship and Research Assistantship, 1987-1989

Texas A&M University
Distinguished Student
Phi Eta Sigma
Phi Kappa Phi
Academic and Lechner Merit Awards

Aransas Pass High School, Distinguished Alumnus (2005)

10. Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

None

11. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

None

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Since graduate school, memberships include:

- **Kent Gardens Recreation Club (McLean, Virginia; 2004 - present)**
- **The Texas State Society (Washington, D.C.; 2003 - present)**
- **Maplewood South – North Community Improvement Association (Houston, Texas; 1995-1997)**
- **Public Policy Committee of the United Way of the Texas Gulf Coast (Houston, Texas; 1995-1997)**
- **Downtown Rotary Club (Houston, Texas; 1992-1993)**

By-laws for the Kent Gardens Recreation Club and the Maplewood South - North Community Improvement Association are included in Attachment A.

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations discriminate on the basis of race, sex, or religion.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Attachment A

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association,

committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Attachment B. Oral Testimony on prisoner reentry programs before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

Attachment C. The Office of Communications at the Office of Justice Programs wrote and tracked speeches. In my position at the Department of Homeland Security, no such system existed. I supplied all information that was available.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Attachment D. *Congressional Quarterly*, July 14, 2003

47206.427

14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

02/03 - 04/03 Orlando Sanchez for Mayor
Campaign Manager
Houston, Texas

09/93 - 12/93 Lloyd Kelley for City Council
Campaign Manager
Houston, Texas

01/92 - 03/92 Esther Yao for Congress
Republican Primary
Volunteer Coordinator
Houston, Texas

08/91 - 12/91 Lloyd Kelley for City Council
Campaign Manager
Houston, Texas

Positions listed above were employment with the campaign. Texas Senator John Cornyn (2002);Texas Governor Rick Perry (2002); Michigan Strike Force (2000) for George W. Bush for President; Lloyd Kelley for Houston City Controller (1995); and Robert Eckels for Harris County Judge (1998, 2002) were volunteer positions with duties as assigned. Member of the Republican National Committee and College Republicans in undergraduate school.

15. **Legal Career**: Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

ii. whether you practiced alone, and if so, the addresses and dates;

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

12/2006 - Present	**Acting Principal Deputy Director** **National Institute of Justice** **Office of Justice Programs** **U.S. Department of Justice** **810 7th Street, N.W.** **Washington, D.C. 20531**
09/2005 - 06/2007	**Deputy Assistant Attorney General** **Office of Justice Programs** **U.S. Department of Justice** **810 7th Street, N.W.** **Washington, D.C. 20531**
05/2003 - 08/2005	**Director for Local Coordination** **Office of State and Local Government Coordination** **U.S. Department of Homeland Security** **3801 Nebraska Ave., N.W.** **Washington, D.C. 20016**
09/1997 - 04/2003	**Chief of Staff/Policy Coordinator** **Harris County Judge Robert Eckels** **1001 Preston Avenue, Suite 911** **Houston, Texas 77002**
01/1996 - 08/1997	**Deputy Controller** **City Controller Lloyd Kelley** **City of Houston** **900 Bagby Street** **Houston, Texas 77002**
01/1994 - 12/1995	**Senior Aide** **City Council Member Lloyd Kelley** **City of Houston** **900 Bagby Street** **Houston, Texas 77002**

1995	**University of Houston - Downtown** **Lecturer for the Department of Social Sciences** **One Main Street** **Houston, Texas 77002**
1994	**University of Houston** **Lecturer for the Department of Political Science** **4800 Calhoun Road** **Houston, Texas 77004**
05/1992 - 05/1993	**Financial Consultant** **Smith Barney Shearson** **717 Texas Avenue** **Houston, Texas 77002**
09/1991 - 12/1991	**Campaign Manager** **Blakemore and Associates** **3405 Edloe Street** **Houston, Texas 77027**
1990-1991	**Tulane University** **Instructor of International Relations** **Department of Political Science** **6823 St. Charles Avenue** **New Orleans, Louisiana 70118**
08/1990 - 08/1990	**Intern - Office of Congressman Robert Livingston** **U.S. House of Representatives** **Rayburn House Office Building** **Washington, D.C. 20515**
08/1988 - 08/1988	**Intern** **Los Angeles Times** **Times Mirror Company** **Times Mirror Square** **Los Angeles, California 90012**
06/1987 - 08/1987	**Reservations** **Coral Cay Condominium** **1419 11th Street** **Port Aransas, Texas 78373**

01/1987 - 05/1987 **Cashier**
Hilton Hotel
801 University Drive East
College Station, Texas 77840

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

ii. your typical clients and the areas, if any, in which you have specialized.

N/A

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:
1. federal courts;
2. state courts of record;
3. other courts.

ii. Indicate the percentage of your practice in:
1. civil proceedings;
2. criminal proceedings.

N/A

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

i. What percentage of these trials were:
1. jury;
2. non-jury.

N/A

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

N/A

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Below are ten professional references:

Ms. Regina Schofield
Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice
202-307-5933

Mr. Joshua Filler
Former Director of Office of State and Local Government Coordination - Department of Homeland Security (my immediate supervisor)
202-261-6560

Judge Robert Eckels
Former employer - Harris County, Texas
713-651-5151

Mr. Duncan Campbell
Former Chief of Staff - Department of Homeland Security
703-837-9696

Ms. Christy McCampbell
Deputy Assistant Secretary
U.S. Department of State
Former co-worker - Department of Homeland Security
202-647-0455

Charles Bacarisse
Harris County District Clerk
Houston, Texas 77002
713-755-5749

Cybele Daley
Deputy Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice
202-514-2771

Mr. Paul Bettencourt
Harris County Tax Assessor/Collector
Houston, Texas 77002
713-368-2510

Ms. Beth McGarry
Deputy Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice
202-307-6348

Mr. Phil Merkel
Director of Administration
Office of Justice Programs
U.S. Department of Justice
202-307-2534

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Since being designated as Acting Principal Deputy Director of NIJ last December, my advanced degrees in social science have proven beneficial when working with staff, outside researchers, and practitioners to review research and determine priorities for the agency.

My work experience also provides a solid foundation for setting priorities and managing NIJ. The primary mission of the Office of Justice Programs and NIJ is to serve state and local agencies in the criminal justice arena. I have served in, or as a liaison to, state and local governments for the last 13 years, beginning with the City of Houston in 1994.

47206.433

As Chief of Staff and Policy Director to Harris County Judge (County Executive) Robert Eckels, I managed and promoted policy initiatives in the areas of criminal justice, emergency management, social services, health, and the environment. I oversaw the legislative agenda, community affairs, press relations, and managed staff, with a constituency of over 3.4 million people. In addition, I coordinated the Judge's response to terrorist threats in Harris County and the greater Houston region.

As Director for Local Coordination in the Office of State and Local Government Coordination and Preparedness at the Department of Homeland Security, I worked with state and local governments across the country. The Office served as the Department's point of contact for state and local governments and was the primary grant, training, and preparedness division within the Department. I was the liaison to the nation's cities, counties, townships and other divisions of local government. I worked with national organizations, including the U.S. Conference of Mayors, the National Association of Counties, the National League of Cities, and other national organizations that represent police, fire, and emergency management professionals. I spoke at and participated on panels at the organizations' annual and legislative conferences; spoke at homeland security summits given by governments or elected officials at all levels of government; and worked to get state and local representation and input on Department initiatives.

My broad background in state and local issues gives me an understanding and context in which to prioritize the numerous research areas in which NIJ is involved. My experience with homeland security issues are particularly relevant because Title II of the Homeland Security Act of 2002 established an Office of Science and Technology (OST), which resides within NIJ, to serve as the national lead for criminal justice technology, including technology needed by law enforcement to combat terrorism.

As Deputy Assistant Attorney General for the Office of Justice Programs (OJP), my primary job was to coordinate the policy activities of the five bureaus and program offices, including NIJ, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics, the Office for Victims of Crime, the Community Capacity Development Office, and the newly created Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART). Priority issues included Project Safe Neighborhoods, law enforcement information sharing, tribal justice, the President's DNA Initiative, prisoner reentry, human trafficking, juvenile justice, the Internet Crimes Against Children Task Forces, and identity theft, among others. In addition, I reviewed all OJP solicitations, grant awards, and publications for the Assistant Attorney General.

The Assistant Attorney General also asked me to manage the production of the 2007-2012 OJP Strategic Plan. The Strategic Plan concluded that the diverse

agencies of OJP should better coordinate their activities and focus grant funding on those areas that have the greatest impact on their mission. It also concluded that OJP should concentrate on increasing knowledge in the fields of the various bureaus and program offices; that our programs should be evidence-based, driven by research findings, and that best practices be disseminated to our constituents. Each time program funding is awarded should be more efficient and effective than the last.

Given those conclusions, I considered the chance to serve at NIJ as a great opportunity. I came to NIJ with a working knowledge of its operations and many of the OJP issues that are subjects of its research and evaluation; and the Strategic Plan's focus on best practices placed NIJ, as the research, development, and evaluation agency, front and center in the mission of OJP's diverse agencies.

Since December, I have worked with the OJP leadership to better integrate NIJ's expertise into all of OJP's programs. How do we develop appropriate performance measures for offices and programs? How do we better integrate the data we gather from grantees to improve the performance of offices and programs? What are the benchmarks for conducting longer-term, outcome evaluations for programs? Finally, how does OJP and NIJ in particular do a better job of disseminating the results of the knowledge gained?

We are now completing a cooperative agreement with the National Academy of Sciences to review the activities of NIJ and help answer these basic questions. NIJ's Office of Research and Evaluation is focused on how better to use its evaluation expertise to benefit all of OJP. The Office of Science and Technology will continue work in multiple technology fields, concentrating on how to bring useful, cost-effective technology to local policing agencies. NIJ is also finalizing a cooperative agreement with the Kennedy School of Government at Harvard to conduct a three-year Executive Session on Policing in the 21st Century, focusing on the new challenges facing police agencies, particularly post 9/11.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

1995 **University of Houston - Downtown, Houston, Texas**
Lecturer for the Department of Social Sciences. Taught institutions of U.S. government, including the executive, legislative, and judicial branches of government at the national and state level.

1994 **University of Houston, Houston, Texas**
Lecturer for the Department of Political Science. Taught social policy class composed of introduction to public policy, economic policy, and social welfare policy.

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1990-1991 Tulane University, New Orleans, Louisiana
Instructor of international relations for three semesters. Introductory course covering review of major theories, ideas, and events in international relations.

19. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Texas County and District Retirement System (TCDRS) defined benefit plan, eligible for benefits at age 60	**$ 49,411.44 (12/31/2006)**
Harris County Deferred Compensation defined contribution plan, no longer contributing to plan	**$ 73,394.82 (3/31/2007)**
City of Houston Deferred Compensation defined contribution plan, no longer contributing to plan	**$ 61,056.56 (3/31/2007)**

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Attachment E. SF278

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

Attachment F

23. **Potential Conflicts of Interest**:

a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

No conflicts exist of which I am aware. In the event of a potential conflict of interest, I will consult with Department of Justice ethics officials and follow their guidance.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I will consult with Department of Justice ethics officials and follow their guidance.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have contributed time and money to various charitable causes, including the Jerry Lewis Labor Day Telethon for Multiple Sclerosis, the American Cancer Society, Habitat for Humanity, and the March of Dimes.

I have been a member of and contributed to various Catholic churches since 18 and currently contribute to Catholic Charities and Catholic Relief Services.

I also have contributed to Texas A&M and Tulane Universities.

FINANCIAL STATEMENT **ATTACHMENT F**

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		34	000	Notes payable to banks-secured		2	996
U.S. Government securities-add schedule			0	Notes payable to banks-unsecured			0
Listed securities-add schedule		333	494	Notes payable to relatives			0
Unlisted securities--add schedule			0	Notes payable to others			0
Accounts and notes receivable:				Accounts and bills due		2	500
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable-add schedule		451	861
Real estate owned-add schedule		725	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			
Autos and other personal property		80	000				
Cash value-life insurance			0				
Other assets itemize:							
				Total liabilities		457	357
				Net Worth		715	137
Total Assets	1	172	494	Total liabilities and net worth	1	172	494
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule) No			
On leases or contracts			0	Are you defendant in any suits or legal actions? No			
Legal Claims			0	Have you ever taken bankruptcy? No			
Provision for Federal Income Tax			0				
Other special debt			0				

Financial Statement

NET WORTH

Schedules

U.S. Government Securities – Any held are included in mutual funds listed below.

Listed Securities

Continental Airlines Stock 479.34 Shares @ $33.97 $16,541.90 (6/23/2007)
Continental Airlines Stock Options 3,084 Outstanding, 0 Exercisable, 0 Account Value (6/23/2007)

Harris County Deferred Compensation (03/31/2007)

Fidelity Contrafund	35,325.72
Nationwide Fixed Account	6,142.81
Pimco Total Return Fund	5,746.35
Templeton Foreign Fund	26,179.94
	$73,394.82

City of Houston Deferred Compensation (3/31/2007)

Oppenheimer Global Fund	18,951.08
Fidelity Contrafund	33,023.46
PIMCO Total Return	4,128.74
Houston Fixed Fund	4,953.28
	$61,056.56

Continental Airlines 401(k) (4/22/2007)

Fidelity Midcap	30,266.20
T. Rowe Price Midcap Growth	26,408.19
T. Rowe Price New Income	14,080.92
T. Rowe Price Stable Value	11,404.31
T. Rowe Price Spec. Income	.01
	$82,159.63

Thrift Savings Plan $50,929.08 (12/31/2006)

Texas County & District Retirement System $49,411.44 (12/31/2006)

Real Estate Owned

McLean, Virginia 22101 $725,000

Real Estate Mortgages Payable

McLean, Virginia 22101 $451,861
Countrywide Bank, N.A.
USAA Federal Savings Bank

U.S. Department of Justice

Justice Management Division

Departmental Ethics Office

Washington DC 20530

June 7, 2007

Mr. Robert I. Cusick
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Mr. Cusick:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of David W. Hagy, who has been nominated by the President to serve as Director, National Institute of Justice, Department of Justice. We have conducted a thorough review of the enclosed report.

As required by 18 U.S.C. § 208(a), Mr. Hagy will not participate personally and substantially in any particular matter that has a direct and predictable effect on his financial interests or those of any other person whose interest are imputed to him, unless he first obtains a written waiver, pursuant to Section 208(b)(1). Mr. Hagy understands that the interests of the following persons are imputed to him: his spouse, minor children, or any general partner; any organization in which he serves as an officer, director, trustee general partner or employee; and any person or organization with which he is negotiating or have an arrangement concerning prospective employment.

We have advised Mr. Hagy that because his spouse holds common stock and stock options in Continental Airlines where she is employed as a senior attorney, under 18 U.S.C. § 208, he is prohibited from participating personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of Continental Airlines and its subsidiaries, unless he first obtains a written waiver or qualifies for a regulatory exemption.

We have also advised Mr. Hagy that because of the standard of conduct on impartiality at 5 CFR 2635.502, he should seek advice before participating in a particular matter involving specific parties which he knows is likely to have a direct and predictable effect on the financial interest of a member of his household, or in which he knows that a person with whom he has a covered relationship is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Lee J. Lofthus
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

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SF 278 (Rev. 6/2000)
5 C.F.R. part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209-0001

Date of Appointment, Candidacy, Election or Nomination *(Month, Day, Year)*	Reporting Status *(Check Appropriate Boxes)*	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*

Reporting Individual's Name	Last Name: Hagy	First Name and Middle Initial: David W.
Position for Which Filing	Title of Position: Director, National Institute of Justice	Department or Agency *(If Applicable)*: U.S. Department of Justice
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 810 7th Street, N.W., Washington, D.C. 20531	Telephone No. *(Include Area Code)*: 202-616-3453
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Same as Above)*	Title of Position(s) and Date(s) Held: Deputy Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice - 9/12/05-present Acting Principal Deputy Director, National Institute of Justice, U.S. Department of Justice-12/01/06-present	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Judiciary	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date *(Month, Day, Year)*
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge	*David W. Hagy*	5/3/07
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
	Jane H. Rodgers	6/6/07
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official Reviewing Official	Date *(Month, Day, Year)*
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below)	*Jane Ley Fletcher*	6/7/07
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days ————) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents. The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

Supersedes Prior Editions, Which Cannot Be Used. 278-112 NSN 7540-01-070-8444

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OGE Form 278 (Rev. 01/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A	Page Number
Hegy, David W.		2 of 7

| Assets and Income | Valuation of Assets at close of reporting period | | | | | | | | | | | | | | | Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. | | | | | | | | | | | | | | |

SF 278 (Rev. 04/2000)
5 C.F.R. Part 2634
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Reporting Individual's Name:	SCHEDULE A continued (Use only if needed)	Page Number
Hagy, David W		3 of 7

Assets and Income	Valuation of Assets at close of reporting period													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in block C for that item.																	
																Type						Amount									
BLOCK A	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Harris County Deferred Compensation PIMCO Total Return Fund - Class A	X												X							X												
2 City of Houston Deferred Compensation Fidelity Contrafund			X										X							X												
3 City of Houston Deferred Compensation Oppenheimer Global Fund			X										X							X												
4 City of Houston Deferred Compensation Houston Fixed Fund		X											X							X												
5 City of Houston Deferred Compensation PIMCO Total Return Fund		X											X							X												
6 (S) Continental Airlines, Inc. Common Stock B			X																X	X												
7 (S) Continental Airlines, Inc. Common Stock B - Employee Stock Option		X																	X	X												
8 (S) Continental Airlines, Inc. - 401(K) Fidelity Mid-Cap Stock Fund			X										X							X												
9 (S) Continental Airlines, Inc. - 401(K) T.Rowe Price Mid-Cap Growth Fund			X										X							X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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SF 278 Rev. 01/2008
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Hagy, David W

SCHEDULE A

Page Number: 4 of 7

Assets and Income

BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period

BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

BLOCK C

	Assets and Income	Valuation of Assets at close of reporting period												Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common			x													x																
	Doe Jones&Smith, Hometown State				x																			x								Rent Farm 2000 income $10,000
	Kempstone Equity Fund					x									x																		
	IRA: Heartland 500 Index Fund						x								x																		
1	(S) Continental Airlines, Inc. - 401 (K) T-Rowe Price New Income Fund		X												X					X												
2	(S) Continental Airlines, Inc. - 401 (K) T-Rowe Price Stable Fund		X												X					X												
3																																	
4																																	
5																																	
6																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Price Editions Cannot Be Used

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Hagy David W		5 of 7

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (X)			Date (Mo., Day, Yr.)	Amount of Transaction (X)													
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	X			2/1/99			X									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name: Bagley, David W.

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☒

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x) $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 St., Washington, DC	Promissory note	1999	10%	on demand					x						

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
	Texas County and District Retirement System (TCDRS) - defined benefit plan, eligible for benefits at age 60	TCDRS, State of Texas, Harris County	09/97
	Harris County Deferred Compensation - defined contribution plan, no longer contributing to plan	Harris County	9/97
	City of Houston Deferred Compensation - defined contribution plan, no longer contributing to plan	City of Houston	1/94

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
Hagy, David W		7 of 7

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☒

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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Our third nominee is Scott Burns. Mr. Burns currently serves as the Deputy Director of the State, Local, and Tribal Affairs in the White House Office of National Drug Control. Most recently, Mr. Burns was appointed by the White House to serve as the United States' representative to the World Anti-Doping Agency, WADA, an international organization charged with eliminating doping and drug use in sports. Mr. Burns represents the 40-nation Americas Region on WADA's Governing Foundation Board, and also chairs WADA's Ethics and Education Committee which aims to educate young athletes worldwide on the health and ethical dangers of drug use.

Mr. Burns is also responsible for the oversight of a $226 million High-Intensity Drug Trafficking Area, HIDTA, program. Prior to his work at the White House, Mr. Burns served as the county attorney in Iron County, Utah as an adjunct professor at Southern Utah University. Mr. Burns taught numerous criminal justice courses. Mr. Burns is a graduate of Southern Utah University. He received his J.D. from California Western School of Law.

Mr. Burns.

STATEMENT OF SCOTT M. BURNS, NOMINEE TO BE DEPUTY DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT

Mr. BURNS. Thank you, Chairman Cardin. Thank you for taking the time to chair this hearing. I also want to express my appreciation, of course, to Senator Leahy and his staff, who I've had the pleasure of working with in preparing for this.

I am honored to be here. There are important issues that we face with respect to the national drug control issues. You mentioned a few of them. E-prescribing and on-line pharmacies and doping in sports are all issues that you and the committee have been extremely helpful with. I have submitted written testimony and I look forward to any questions you may have.

I did bring one person, my 16-year-old daughter, Karly, and advisor. She told me just before I came up, "Dad, this looks important. Don't blow it."

[Laughter.]

Thank you.

Senator CARDIN. Good advice. Yes.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUCICIAL NOMINEES

PUBLIC

1. **Name:** Full name (include any former names used)

Scott McLaughlin Burns; Scott M. Burns; Scott Burns.

2. **Position:** State the position for which you have been nominated.

Deputy Director, Office of National Drug Control Policy.

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: 750 17th Street, N.W., Washington, D.C. 20503
Residence: 1648 Roxanna Road, N.W., Washington, D.C. 20012

4. **Birthplace:** State date and place of birth.

March 7, 1958; Salt Lake City, Utah.

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

I am not married. My former spouse's name is Alice Ritter Burns; her maiden name was Alice Marie Ritter. My former wife's occupation is attorney at law. My former wife's employer is the Armed Services Board of Contract Appeals, 5109 Leesburg Pike, Skyline 6, Room 703, Falls Church, Virginia 22041. There is one dependent child (Carly, age 16).

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

California Western School of Law, 350 Cedar Street, San Diego, California 92101; attended from August, 1981, to May, 1984; received a Juris Doctorate degree in May, 1984.

Southern Utah University, 351 West Center Street, Cedar City, Utah 84720; attended from September , 1976, to May, 1980; received a B.S. degree in May, 1980

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7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Deputy Director, State, Local and Tribal Affairs, White House Office of National Drug Control Policy, 750 17th Street, N.W., Washington, D.C. 20503; May 6th, 2002 to present.

Iron County Attorney (elected), 97 North Main Street, Cedar City, Utah 84720; January, 1987 to May, 2002.

Burns & Burns, Attorneys at Law; partner (with wife); 97 North Main Street, Cedar City, Utah 84720; October, 1985 to January, 1987.

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rand or rate, serial number (if different from social security number) and type of discharge received.

I have never served in the military, nor have I ever been subject to a draft.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

None that would be of interest to the committee.

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Utah Bar Association, 1984 to present.

11. **Bar and Court Admission:** (a) List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership; and (b) List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Utah Bar Association, 1984 to present (no lapses at any time); admitted to practice in all courts in Utah (Justice of Peace Courts, District Courts, Utah Court of Appeals, Utah Supreme Court and Federal District Court in and for Utah).

12. **Memberships:** (a) List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences or publications; and (b) Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

12(a)

B.P.O.E., Elks, USA, a fraternal organization, Cedar City, Utah, Lodge No. 1556, Membership No. 1765; 1988 to 2002; I did not hold any positions within this organization.

Adjunct Professor, Southern Utah University (criminal justice and law courses); taught various courses from 1992 to 1998.

Member of Republican Party since 1979. I have served as local and state delegate to the Utah Republican Convention on several occasions and, in 1996, was an alternate delegate to the National Republican Convention in San Diego, California. I have served as Iron County Campaign Chairman for Orrin G. Hatch, U.S.S.; Robert F. Bennett, U.S.S., and Michael O. Leavitt, Utah Governor; these activities occurred at various times between 1992 to 2002.

Utah State Bar, 1984 to present; Judge Advocate, Utah Chiefs of Police Association, 1992 to 1997; Chairman, Southern Utah Law Enforcement Agencies Board, 1987 to 2002; Statewide Association of Public Attorneys (SWAP), 1989 to 2002; Utah Peace Officers Standards and Training Board Member (Utah Police Academy), 1993 to 2001.

Christ the King Catholic Church, 1990 to 2002; served a one-year term on Parish Council.

12(b)

In 1988, I joined the B.P.O.E. Elks USA, a fraternal organization, Cedar City, Utah, Lodge #1556, Member No. 1765. On September 10, 1992, I withdrew my membership when allegations were made that the B.P.O.E. Elks USA discriminated against those seeking membership based upon gender and possibly race. After the allegations were resolved, nationally and in the state of Utah, and upon satisfying myself that the organization no longer discriminated based upon race, sex, or religion, I re-established my membership on May 22, 1996. I have not held any positions with this organization.

13. **Published Writings and Public Statements:** (a) List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee; (b) Please supply four

(4) copies of any of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, conference, or organization of which you were a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and summary of its subject matter; (c) Please supply four (4) copies of any testimony, official statements or other communicatlons relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials; (d) Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke; and (e) Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Exhibit "A" attached hereto and incorporated herein by this reference.

(a)

I have not authored any books, reports, letters to the editor or editorial pieces that I recall. I did author a series of articles in the early 1990's entitled "Legal Corner" for the Utah Chiefs of Police Magazine. Four (4) copies of the articles I was able to locate are contained within Exhibit

(b)

I do not recall ever writing any reports, memoranda or policy statements (or contributed to the preparation of) on behalf of any bar association, conference, or organization of which I was a member.

(c)

The only testimony or official statements made were in conjunction with appearing before US Senate and US House of Representatives Committees; four (4) copies are attached and contained within Exhibit "A".

(d)

In my capacity as Iron County Attorney (1987 — 2002) and as a candidate for Utah Attorney General (1992 and 1996), I have given well over one hundred (100) speeches. Obviously, the

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content and nature of these speeches related to my political campaigns (current and relevant issues relating to the offices I sought), but I do not believe that the content of any of these speeches could be considered controversial. These were standard "stump speeches" and I did not keep copies of these speeches.

In my capacity as Deputy Director, State, Local and Tribal Affairs at the Office of National Drug Control Policy, I have been involved in many panel discussions, lectures, question and answer sessions, town hall meetings, and I have delivered many keynote addresses. While I do not have "copies" of any speeches or remarks (I work from basic talking points, not a drafted word-for-word speech) I have set forth in four (4) copies in Exhibit "A" the date, location, description of the event, and the talking points used (Marijuana, Drug Courts, National Drug Control Strategy, Methamphetamine and Synthetic Drugs, Native American Issues, High Intensity Drug Trafficking Area program, and Department of Defense issues); a travel log is attached that should correspond with the talking points.

(e)

In that the Office of National Drug Control Policy does not copy, log or keep track of my "media interviews" or "media events", I have endeavored to locate as many interviews (newspaper, radio, television, magazines, etc) as possible by accessing the internet and doing a search. Four (4) copies, attached within Exhibit "A", set forth the results of that search in chronological order.

14. **Public Office, Political Activities and Affiliations:** (a) List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office; and (b) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

(a)

Successful candidacies: Iron County Attorney, 1986: Iron County Attorney, 1990; Iron County Attorney, 1994; Iron County Attorney, 1998; Unsuccessful candidacies: Utah Attorney General, 1992; Utah Attorney General, 1996; Utah State Court Judge (appt. process), 2006.

(b)

As Iron County Attorney from 1987 to 2002 I usually served, each year, as the Parliamentarian at each Republican County Convention; as for campaigns, I served as Iron County Chairman for Senator Orrin Hatch's campaigns in 1994 and 2000, as well as Senator Robert Bennett's campaign Chairman in Iron County in 1998. Finally, I served as Iron County coordinator and volunteer for Michael Leavitt's gubernatorial campaigns in 1996 and 2000. In each of the

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campaigns (Hatch, Bennett and Leavitt) my basic responsibilities were to coordinate with the Campaign Team re lawn signs, mail drops, visits by the candidate to the county or small towns within the county and be, essentially, the contact person in a small rural county in Utah.

15. Legal Career: Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as a clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

NO.

ii. whether you practiced alone, and if so, the addresses and dates;

NO.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Burns & Burns, 1984 to 1987; partner with wife, Alice Ritter Burns
Iron County Attorney (elected) 1987 to 2002.

b. Describe:

i. the general character of your law practice and indicate by date when its character changed over the years.

1984 to 1987: Criminal defense, civil litigation, divorce, personal injury, probate, and essentially all areas of law consistent with a general practice in a small town.

1987 to 2002: Elected Iron County Attorney and, as such, duties included criminal prosecution, defense of lawsuits against the county, advising elected officials on various issues (ordinances, tax matters, road issues, zoning laws, special service and special improvement districts, etc.) and essentially every other duty (criminal and civil) required of a county attorney.

ii. your typical clients and the areas, if any, in which you have specialized.

1984 to 1987: Criminal defendants and litigants in civil, personal injury and divorce litigation.

1987 to 2002: The citizens of Iron County, State of Utah.

I did not specialize in any particular area or subject matter.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearance in court varied, describe such variance, providing dates.

I appeared in court frequently for a period of over 15 years (by frequently, I would say at least 3 times per week, handling a number of cases during each appearance).

i. Indicate the percentage of your practice in federal courts, state courts of record and other courts.

1. federal courts: 1%
2. state courts of record: 98%
3. other courts: 1%

ii. Indicate the percentage of your practice in civil proceedings and criminal proceedings.

1. civil:	1984 to 1987	70%
	1987 to 2002	20%
2. criminal:	1984 to 1987	30%
	1987 to 2002	80%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried, over a 15 year period, approximately 150 jury trials to verdict or judgment as sole counsel. I also tried, at a minimum, 50 non-jury trials to verdict or judgment as sole counsel.

i. What percentage were jury and what percentage were non-jury.

1. jury: 75%
2. non-jury 25%

e. Describe your practice, if any, before the Supreme Court of the United States. Please provide four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

16. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify

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the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case (a) the date of representation; (b) the name of the court and the name of the judge or judges before whom the case was litigated; and (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

See Exhibit "B" attached hereto and incorporated herein by this reference.

> **17. Leal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s). (Note. As to any facts requested in this question, please omit any information protected by the attorney-client privilege).

I have never performed lobbying activities for any clients or organizations. As for "most significant legal activities pursued, including significant litigation which did not progress to trial.. .", I would say that as an attorney and litigator in a small town for seventeen (17) years, I had the opportunity to become involved in a wide range of issues and cases. It is difficult to say which cases or legal activities are the "most significant" as I believe that my pro bono work (adoptions, defense of indigent defendants, attempts to raise the level of health care in my community) is an aspect of my practice of which I am most proud. However, I have also had the opportunity to appear in court and litigate, before juries, important matters such as the death penalty, narcotics cases, child and sexual abuse, domestic violence, internet and computer crimes, and essentially every type of criminal offense a rural attorney could handle from driving under the influence of alcohol to capital murder. I have had the opportunity to be involved in high profile cases (I assisted New York District Attorney Robert Morgenthau's office in the prosecution of Kenneth and Sante Kimes, known as "the Grifters); novel cases (in 2001 I convicted two individuals who traveled to our county, with a 20-20 news crew and correspondent Christopher Cuomo, to drill holes in people's heads under the representation that this "trepanation" was an accepted medical procedure); and I have also been blessed with many experiences wherein I realized why I pursued the practice of law (a note of gratitude from a rape victim; a hug from a child, that had been the victim of abuse, after a verdict of guilty against the perpetrator) and the satisfaction of knowing that, maybe.. .and hopefully, I made a small difference in someone's life because of my actions as a lawyer.

> **18. Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I taught as an adjunct professor, in the Criminal Justice Department, at Southern Utah University at various times between 1992 and 1998 (usually just one course during one semester). The courses I taught were basic, entry level courses dealing with the criminal justice system (the process) and basic constitutional law, with an emphasis on the *4th* amendment. I also taught,

from approximately 1992 to 1998, at the Utah Police Academy; I taught candidates the Utah Criminal Code, essentially going through all of the criminal offenses, defenses, and legal procedures applicable under Utah law. I do not have a syllabus from any of the courses cited.

19. **Deferred Income/Future benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Utah State Retirement Plan, non-contributory, vested, earned through 16 years as Iron County Attorney, Utah; I am told it has a current value of $29,276.10; moreover, having served over 5 years as Deputy Director, State and Local Affairs, White House Office of National Drug Control Policy, I have a Federal Retirement Plan, contributory (Thrift Saving Plan), currently valued at $6,077.63.

I have no anticipated receipts from deferred income arrangements; no stock options; no uncompleted contractor other future benefits which I expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers; and I have made no arrangements to be compensated in the future for any financial or business interest.

20. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

NO.

21. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in government Act of 1978, may be substituted here).

The only sources and amounts of all income received during the calendar year preceding my nomination, and for the current calendar year, are derived from my salary as Deputy Director for State, Local and Tribal Affairs within the Office of National Drug Control Policy, to wit:

2006:	$152,000.00	Gross Pay
2007:	$154,600.00	Gross Pay ($82,869.60 gross as of 7/13/07)

22. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See Exhibit "C" attached hereto and incorporated herein by this reference.

23. Potential Conflicts of Interest:

a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

While I do not consider it to present a potential conflict of interest, I was involved in a traffic accident on March 11, 2005, in Utah. The matter is being handled by my insurance company and I anticipate a resolution via settlement. There are no other affiliations, litigation, or financial arrangements likely to present a conflict of interest.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I am not aware of any potential conflict of interest that is, or will require, a resolution.

24. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

As an attorney, licensed to practice law in the state of Utah since 1984, and prior to assuming my current position at the Office of National Drug Control Policy, I attempted (each year) to provide pro bono legal services for the disadvantaged or devote time to assist those in need in my community. Please know that, during my entire legal career, I have made great effort to provide professional legal assistance to those who were disadvantaged. By way of example (just prior to coming to the District of Columbia in 2002) I concluded a pro bono case wherein I represented a young and indigent college couple that was sued by a landlord over a lease agreement. I devoted approximately twenty (20) hours of legal services, including appearance at the non-jury trial, on their behalf.

As the elected Iron County Attorney, my private civil practice was extremely limited and, as such, my ability to provide pro bono services was sometimes difficult given my prosecutorial duties (in a small town and county, those often in greatest need of pro bono assistance were also involved in the criminal justice system which precluded me from rendering assistance); however, over the years I have served as counsel in several pro bono adoptions (the lost one being in the year 2000). As a graduate of Southern Utah University, and a former athlete, I also provided services to many athletes, particularly minorities who moved to southern Utah to attend school and were experiencing difficulties in adjusting to the local culture and customs. By way of

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example, the star running back on the university football team fathered a child out of wedlock with a young woman who lived in the southern Utah community; the parents of the young woman told the position that he could not visit the child and they would not acknowledge his paternity. I represented this young man, who agreed to fulfill all of the required obligations of fatherhood (costs of birth, child support, etc.), and established paternity and visitation rights on his behalf through litigation.

Finally, from 2000 to 2002, I devoted well in excess of 200 hours in an effort to bring the level of health care services in my county to an acceptable level. Our community was without oncology services, dialysis, or even pathology capabilities at the local hospital. I made great effort to encourage the "non-profit" medical services provider (IHC) to provide these basic health care services to our citizens. Moreover, I demanded the creation of a subcommittee made up of government officials and hospital administrators and officials to audit the hospital's procedures to ensure that indigent persons receive the same level of health care as those who are insured and, just prior to leaving for Washington, D.C. in early 2002, I was informed that the Hospital (IHC) agreed to (a) increase the projected spending on a new hospital from $23 million to $30 million, (b) provide oncology and dialysis services within twelve (12) months, and (c) ensure that no person shall be denied medical treatment regardless of race, religion, or ability to pay.

Senator CARDIN. Cynthia Dyer. Ms. Dyer currently serves as Senior Advisor to the Assistant Attorney General for the Department of Justice. Prior to serving at the Department of Justice, she served at the Dallas County District Attorney's Office. Before joining the Department of Justice, she was the chief felony prosecutor of the Family Violence Division. Prior to this, she served as the Assistant District Attorney. Earlier in her career she served as a misdemeanor and felony prosecutor.

Mrs. Dyer has also volunteered at Genesis Women's Shelter in Dallas, Texas for 9 years prior to moving to Washington, DC. During this time she aided residents of the shelter and transitional facilities by discussing with them protective orders, police reports, and filing criminal charges.

Mrs. Dyer received her bachelor's degree from Texas A&M University, and her J.D. from Baylor Law School.

STATEMENT OF CYNTHIA DYER, NOMINEE TO BE DIRECTOR OF THE VIOLENCE AGAINST WOMEN OFFICE, U.S. DEPARTMENT OF JUSTICE

Ms. DYER. Thank you so much, Senator. I thank the Senate Judiciary Committee for squeezing us in before the holidays. It is a privilege to be here today.

I want to thank President Bush and Attorney General Mukasey for their nomination and support of me in this position. I have several special people here today: my husband, Jason Ankele, my son Aubrey, my daughter Evie, my mother, Peggy Oswald, and three special friends: Jan Langbein, Jon Lumbley, and Allison Turkel. Thanks so much for them to be here, too.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

Cynthia Diane Dyer
Cindy Dyer Ankele

2. **Position**: State the position for which you have been nominated.

Director, Office on Violence Against Women

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

U.S. Department of Justice
Office of Justice Programs
810 7th Street, N.W.
Washington, DC 20531

Residence:
Alexandria, Virginia

4. **Birthplace**: State date and place of birth.

1967
Elgin, Illinois

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

Married to Matthew Jason Ankele, who works as an attorney at the law firm of Sullivan & Cook. Their address is 2301 Cedar Springs Rd., Suite 200, Dallas, Texas 75201. We have 2 dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

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Baylor Law School, 1990-1993, J.D. May 1993
Texas A&M University, 1986-1990, B.B.A. May 1990

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

a. August 2007 – present, U.S. Department of Justice, Office of Justice Programs, 810 7th Street, N.W., Washington, DC 20531, Senior Advisor to the Assistant Attorney General

b. November 1993 – July 2007, Dallas County District Attorney's Office, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207, Assistant District Attorney
July 1992-August 1992, August 1993- October 1993, unpaid Law Intern

c. 2004 – 2005, Women's Council of Dallas County, 11311 Central Expwy, Suite 201, Dallas, Texas 75243, Board Member (unpaid)

d. 1997 – 2007, Texas Council on Family Violence, P.O. Box 161810, Austin, Texas 78716, Public Policy Committee Member (unpaid)
1999 (approx.) – 2003, Board Member (unpaid)

e. August 1993-October 1993, Law Offices of Camber Hayman, 3216 Commander Dr., Suite 108, Dallas, Texas 75006, paid Law Clerk

f. June 1992 – July 1992, September 1991 – November 1991, Law Offices of Dunn, Kacal, Adams, Pappas, & Law, One Riverway, Suite 1200, Houston, Texas 77056, paid Law Clerk

g. June 1990-August 1990, Metagram America, Park Ave. South, New York, New York, paid Office Clerk

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

None

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

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1997 Local Achievement Award presented by the Texas Council on Family Violence
1999 Henry Wade Prosecutor of the Year Award presented by the Greater Dallas Crime Commission
2000 Jane Doe Award presented by the Genesis Women's Shelter
2001 Equal Justice Award presented by Legal Services of North West Texas
2003 Stephen Von Riesen Lecturer of Merit Award presented by the National College of District Attorneys
2007 Top Gun Award presented by the Conference on Crimes Against Women
2007 Maura "Women Helping Women" Award presented by the Dallas Women's Museum and Southern Methodist University

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member State of Texas Bar Association, 1993 to present
Texas District and County Attorneys Association, 1993 to present (Faculty and Presenter, Trials Skills Course)
National Institute for the Prosecution of Domestic Violence, Curriculum Development Committee Member and Faculty Member, 2003 to present
National District Attorney's Association, Faculty, National Advocacy Center's Evidence Based Prosecution Course
National College of District Attorney's Association, Faculty Member Annual Domestic Violence Conference, 1998- present

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Member State of Texas Bar Association, 1993 to present (no lapses in membership)

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

All Texas Courts, 1993 to present

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Texas Council on Family Violence, 1995 to present
Board member, approx 1999 – 2003
Public Policy Committee Member, 1997-2007
Junior League of Dallas, 1996 – present
Genesis Alliance (Women's Shelter), approx 2002 – present
Lakewood Country Club, 2006 - present
Dallas Republican Career Women's Association 1999 – 2003
Women's Council of Dallas, Board Member, 2004-2005

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

*I worked with the American Prosecutor's Research Institute along with several other attorneys to co-author their National Institute on Domestic Violence Curriculum.

*Dallas Morning News, Letter to the Editor, January 19, 2002

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

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c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have testified before the Texas Legislature's Criminal Jurisprudence Subcommittee on a couple of domestic violence bills. One bill involved criminal enhancements for re-offenders, one bill involved certification of Batterer's Intervention and Prevention Programs, and bill involved the "Sudden Passion" defense for murder defendants.

I did not use a prepared statement and do not have access to copies of any of these proceedings.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have spoken at numerous conferences including the following:

Texas District and County Attorney Association
National College of District Attorneys
National District Attorney's Association
National Institute on Domestic Violence
National Conference on Crimes Against Children
National Conference on Crimes Against Women
Texas Annual Judicial Conference
International Family Justice Center Conference
Numerous other conferences put on by prosecutor's offices, police departments and family violence service providers across the United States.

I did not speak from a prepared text. I am providing copies of the outlines on which I based the speeches.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have given numerous interviews to local newspapers, radio stations and television stations regarding domestic violence cases that I prosecuted and on the issue of

domestic violence in general. I have also appeared on the television program "20/20" regarding a domestic violence case that occurred in Dallas. I have provided copies of all reports that I have access to. They are as follows:

*Dallas Morning News, February 9, 1996
*The Texas Prosecutor, May 1996
*Dallas Morning News, April 11, 1997
*Dallas Morning News, July 22, 1997
*Dallas Morning News, August 3 1997
* Texas Council on Family Violence Newsletter, October 6, 1997
*The Hereford Brand, December, 16, 1997
*Dallas Morning News, January 8, 1998
*Dallas Morning News, February 15, 1998
*Dallas Community Television, March 1998
*Dallas Morning News, June 24, 1998
*Dallas Morning News, August 25, 1998
*Dallas Morning News, September 17, 1998
*Dallas Morning News, September 19, 1998
*Texas Lawyer, September 21, 1998
*Dallas Morning News, October 1, 1998
*Dallas Morning News, October 20, 1998
*Dallas Morning News, February 12, 1999
*Dallas Morning News, March 15, 1999
*Dallas Morning News, March 21, 1999
*Dallas Morning News, May 6, 1999
*Dallas Morning News, July 9, 1999
*Dallas Morning News, July 17, 1999
*Dallas Morning News, September 23, 1999
*Dallas Morning News September 24, 1999
*Dallas Morning News, September 26, 1999
*Texas Bar Journal, Volume 62, Number 9, October 1999
*Dallas Morning News, October 9, 1999
*Dallas Morning News, October 23, 1999
*Dallas Morning News, November 8, 1999
*Dallas Morning News, January 10, 1999
*Dallas Morning News, November 18, 1999
*Texas Lawyer, December 6, 1999
*Docket Call, Baylor University School of Law, Spring 2000
*Dallas Morning News, April 4, 2000
*Dallas Morning News, April 6, 2000
*Dallas Morning News, May 3, 2000
*Dallas Morning News, May 3, 2000
*Dallas Morning News, May 4, 2000
*Dallas Morning News, May 5, 2000
*Dallas Morning News, May 6, 2000
* Fox 4 News, Dallas, Texas, May 6, 2000

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*Dallas Morning News, May 6, 2000
*MSNBC, Dallas, Texas May 6, 2000
*Dallas Morning news, May 7, 2000
*Dallas Morning News, May 8, 2000
*Dallas Morning News, May 8, 2000
*Dallas Morning News, May 8, 2000
* Genesis Women's Shelter, Newsletter, May 2000
*Dallas Morning News, May 14, 2000
*Dallas Morning News, June 7, 2000
*Legal Services of North Texas, Newsletter
*Dallas Morning News, June 13, 2000
*Park Cities People, June 15, 2000
*Dallas Morning News, June 19, 2000
*Dallas Morning, News, June 25, 2000
*Dallas Morning News July, 8, 2000
*Fort Worth Star Telegram, July 27, 2000
*Dallas Morning News, August 16, 2000
*Dallas Morning News, August 17, 2000
*Dallas Morning News, September 1, 2000
*Arlington Morning News, September 26, 2000
*Dallas Morning News, November 2, 2000
*The Texas Prosecutor, November 2001
*Dallas Morning News, December 3, 2001
*Dallas Morning News, December 4, 2001
*Dallas Morning News, January 19, 2002
*Dallas Morning News, January 21, 2002
*Mary Kay Ash Charitable Foundation, Website, February 2, 2002
*Dallas Morning News, February 20, 2002
*Dallas Morning News, May 2, 2002
*Dallas Morning News, September 2, 2001
*WFAA, Dallas, Texas, August 6, 2002
*Fort Worth Star Telegram, September 13, 2002
*Dallas Morning News, December 27, 2002
*D Magazine, "The List," August 2003
*Genesis Women's Shelter Journal, Winter 2003
*USA Today, February 14, 2005
*Dallas Morning News, February, 20, 2005
*Family Matters, The Family Place Publication, Winter 2006
*Dallas Morning News, August 3, 2007

14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed,

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please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

*Dallas Republican Career Women's Association, Member 1999 – 2003
*Supported incumbent District Attorney Bill Hill during the Republican primary in Dallas, Texas in 2002. I did not hold any position or title in the campaign.

15. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

No

ii. whether you practiced alone, and if so, the addresses and dates;

No

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

August 2007 – present, Department of Justice, Office of Justice Programs, Senior Advisor to the Assistant Attorney General, 810 7th Street, N.W., Washington, DC 20531

November 1993 – July 2007, Dallas County District Attorney's Office, Assistant District Attorney, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207

August 1993 – October 1993, Law Offices of Camber Hayman, Law Clerk, 3216 Commander Drive, Suite 108, Dallas, Texas 75006

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b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I have spent my entire legal career as an Assistant District Attorney for the Dallas County District Attorney's Office. I worked as a general jurisdiction prosecutor in the misdemeanor and felony courts of Dallas County until September 1994. I was the first prosecutor to join the Family Violence Division during its inception in September of 1994. I became the Chief Felony Prosecutor of the Family Violence Division in 1998. I have been a specialized Family Violence Prosecutor for 13 years.

ii. your typical clients and the areas, if any, in which you have specialized.

The vast majority of the victims whose cases I have prosecuted were victims of family violence.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I appeared in court very frequently when I first started at the District Attorney's Office. Once I became the Chief of the Family Violence Division in 1998, I began to appear in court less frequently because my administrative duties increased. However, I have continued to appear in court regularly, although less frequently, and tried my most recent case in February of 2007.

i. Indicate the percentage of your practice in:
   1. federal courts;
   2. state courts of record; 100%
   3. other courts.

ii. Indicate the percentage of your practice in:
   1. civil proceedings;
   2. criminal proceedings. 100%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 200 jury trials and bench trials in state district and county courts. I was the chief counsel in more than 75 of these trials.

i. What percentage of these trials were:
   1. jury; 40%

2. non-jury. 60%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1) State of Texas v. Patrick Timothy Richardson
Charged with Murder and Attempted Solicitation of Capital Murder
Cause numbers F00-01797 V and F00-00766 V
292nd Judicial District Court, Judge Henry Wade
Verdict dates 5/7/00 and 5/14/03
Co- counsel Howard Blackmon (2511 Willowdale, Carrollton, Texas 75006, 972-821-7487)
Defense Counsel Martin Lenoir (3300 Oak Lawn, Suite 600, Dallas, Texas 75219, 214-744-3544) and Jim Burnham (6116 N. Central Expwy, Suite 515, Dallas, Texas 75206, 214-750-6616)
This defendant was a wealthy accountant who lived with his wife and three children in an exclusive neighborhood. When his wife told him she wanted a divorce, he severed her head with scissors in front of their 3 children ages 5, 6, and 8. The jury gave this defendant 60 years in the penitentiary. After being sentenced, the defendant attempted to hire a fellow inmate to burn down the house of the victim's brother who had testified against him at trial. The defendant pled guilty to the second charge of Attempted Solicitation of Capital murder.

2) State of Texas v. Michael Lee
Charged with 2 counts of Aggravated Sexual assault and Burglary of a Habitation
Cause numbers F95-41029, F9541031, and F95-41034
Judge John Tolle, Criminal District Court #3
Verdict date 3/7/96

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Co-Counsel John Grau (Assistant District Attorney, Dallas County District Attorney's Office, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207, 214-653-3600)
Defense attorney Doug Parks (3300 Oak Lawn, Dallas, Texas 75219, 214-521-2670)
This defendant broke into the house of his estranged wife and beat and raped her over a period of several hours. The defendant was a successful business man and was eligible for probation; however, the jury found the defendant guilty and sentenced him to the penitentiary.

3) State of Texas v. Raul Gomez
Charged with Burglary of a Habitation with Intent to Commit a Felony
Cause number F97-00012
Criminal District Court #4, Judge John Cruezot
Verdict date 1/30/97
Co-counsel Martha Hollowell (Assistant District Attorney, Dallas County District Attorney's Office, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207, 214-653-3528)
Defense attorney Julius Whittier (Assistant District Attorney, Dallas County District Attorney's Office, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207, 214-653-3611)
This defendant entered his estranged wife's house and shot her in the neck while she was holding their small child. The victim survived and testified about her ordeal at trial. The jury found the defendant guilty and sentenced him to 20 years in prison. This victim went on to speak out on behalf of domestic violence victims and has spoken at conferences and to the media.

4) State of Texas v. Felipe Deleon,
Charged with Aggravated Assault
Cause number F97-44928 K
Criminal District Court #4, Judge John Cruezot
Verdict date 12/10/97
Co-counsel Martha Hollowell (Assistant District Attorney, Dallas County District Attorney's Office, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207, 214-653-3528)
Defense attorneys Jennifer Castillo (8611 Banff Dr., Dallas, Texas 75243, 214-553-8990) and Lena Levario(Judge, 204th Judicial District Court, 133 N. Industrial Blvd., Dallas, Texas 75207, 214-653-5832)
This was a very unusual case where the victim was held hostage over a lengthy period of time by the defendant. When she finally tried to escape from him, he beat her severely. I tried this case before a jury who found the defendant guilty and gave him 60 years in prison. After the defendant was in the penitentiary, he attempted to locate the victim using her social security number and his gang member contacts on the outside. When I learned about this, I helped the victim obtain a new social security number so that the defendant could not find her. I later supported this victim in her efforts to remain legally in the United States.

5) State of Texas v. James Lohner

Charged with Aggravated Assault
Cause number F97-45385 K
Criminal District Court #4, Judge John Cruezot
Verdict date 11/10/97
Co-counsel Martha Hollowell (Assistant District Attorney, Dallas County District Attorney's Office, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207, 214-653-3528)
Defense Attorneys Jerry Birdwell (P.O. Box 7323, Dallas, Texas 75209, 214-357-3311) and Carl Hays (1826 John West Rd., Dallas, Texas 75228, 214-321-6446)
This was a serious Aggravated Assault case where the victim's husband had punched and kicked her in the face while they were in a car. The victim testified at trial that the defendant should be found not guilty because he was only acting in self defense. I presented evidence including photographs, excited utterance statements, and prior assaults which convinced the jury to find him guilty despite the victim testifying for the defendant. The jury sentenced the defendant to 60 years in prison.

6) State of Texas v. John Naasz
Charged with Murder
Cause number F 96-14600
265th Judicial District Court, Judge Keith Dean
Verdict date 7/25/96
Co-counsel Martha Hollowell (Assistant District Attorney, Dallas County District Attorney's Office, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207, 214-653-3528)
Defense attorney Doug Schopmeyer (Dallas County Public Defender's Office, 133 N. Industrial Blvd., Dallas, Texas 75207, 214-653-3550)
This defendant shot his wife in the face 6 times with a handgun he had purchased a few days earlier at a flea market. The offense occurred in front of their 9 year old son who the defense attorney called to testify at trial. The defendant was probation eligible; however, the jury gave him a life sentence.

7) State of Texas v. Antonio Emerson
Charged with Aggravated Assault
Cause number F96-76688 H
Criminal District Court #1, Judge Janice Warder
Verdict date 8/27/97
Co-counsel Howard Blackmon (2511 Willowdale, Carrollton, Texas 75006, 972-821-7487)
Defense Attorney Steve Seider (Municipal Court Judge, N. Dallas Government Center, 10056 Marsh Lane, Dallas 75229, 214-904-3042)
This case was significant because the victim's boyfriend beat her constantly. On July 17, 1993, the defendant hit the victim in the face with a suitcase causing her to lose her eye. When the victim went to the hospital, she lied to the medical personnel (and also to the police) and told them something or someone else had hurt her. Three years later on June 13, 1996, the victim was finally able to escape this abusive boyfriend and reported to the police what had actually happened to her eye. The

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offense occurred within the statute of limitations, so we filed the case despite the delayed and originally inaccurate report. The jury found the defendant guilty and sentenced him to the maximum 10 year prison sentence.

8) State of Texas v. Rudolph Alba
Charged with Aggravated Assault
Cause number F97-30844
Criminal District Court #1, Judge Janice Warder
Verdict date 4/28/95
Co-counsel Howard Blackmon (2511 Willowdale, Carrollton, Texas 75006, 972-821-7487)
Defense Attorney Manuel Almaguer (435 W. 12th St., Dallas, Texas 75208, 214-941-0777)
This defendant assaulted and threatened his girlfriend. This case was significant because once I began working on this defendant's case, I discovered 2 other women who had been previous victims, but who had never called the police. All 3 of the victims had been assaulted in such a similar manner that all of the victims were allowed to testify at the defendant's trial. Specifically, the defendant had beat the women with the same belt and each of the 3 women testified about how he would take the belt out of his pants, wrap the belt around his hand 3 times, and then beat them with the dangling belt buckle. The defendant had no prior criminal history and was probation eligible, but the jury sentenced him to10 years in prison.

9) State of Texas v. Kenneth Wayne Fields
Charged with 2 counts of Capital Murder
Cause numbers F97-02178 and F97-02179
292nd Judicial District Court, Judge Mike Keasler
Pled guilty 7/21/97
Defense Attorneys Jan Hemphill (4519 West Lovers Lane, Dallas, Texas 75209, 214-358-6466) and Doug Parks (3300 Oak Lawn, Dallas, Texas 75219, 214-521-2670)
This was a complicated capital murder case where the defendant killed one of his girlfriends in the city of Irving, then took a cab and killed another girlfriend in the city of Dallas. After working on this case for months and completely preparing for jury trial, the defendant pled guilty to 2 Life sentences on the day of trial.

10) State of Texas v. Larry Dewayne Scott
Charged with Aggravated Assault
Cause number F 90-01460 H
Criminal District Court #1, Judge John Thorpe, sitting for Judge Janice Warder
Verdict date 5/23/96
Co-Counsel Martha Hollowell (Assistant District Attorney, 133 N. Industrial Blvd., LB 19, Dallas, Texas 75207, 214-653-3528)
Defense Counsel Roger Lennox (P.O. Box 222128, Dallas, Texas 75222, 214-333-3040)
This case is significant because it was the first family violence case in Dallas County which proceeded to a jury trial without the testimony of the victim. The victim in this

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case had been set on fire by her live-in boyfriend while their 9 month old son was asleep in the room. By the time of trial, the victim (who survived the assault) had reunited with the defendant and begged me not to call her to testify. I promised the victim that I would not call her to testify, and I proved up the case by using the victim's sister, the hospital staff, and the responding officers. The defense attorney called the victim to testify (the only witness he called) and she testified that this was all a misunderstanding and begged the jury to find the defendant not guilty. The jury found the defendant guilty, but gave him 10 years probation rather than prison time. A year later, the defendant violated his probation and was sentenced to the maximum 10 years in the penitentiary.

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have spoken extensively throughout the United States on topics regarding the issue family violence. Additionally, I have assisted in developing best practices curriculum for prosecutors and law enforcement regarding domestic violence. In my role as a Texas family violence prosecutor and as a member of the Texas Council on Family Violence's Public Policy Committee, I have assisted in identifying, drafting, and passing legislation to benefit domestic violence victims in Texas. I worked most extensively in the area of modifying and amending the Texas Penal Code, the Texas Code of Criminal Procedure, and the Texas Family Code to implement changes that provide more protection for victims of family violence and their children. I have also maintained regular volunteer work at non-profit agencies that serve women and children including serving on the Board of Directors for the Texas Council on Family Violence and the Women's Council of Dallas County and serving as a weekly volunteer for Genesis Women's Shelter.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

None

19. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or

customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Texas County and District Retirement System (TCDRS) current balance of $75,016.31. Earliest retirement date is December 31, 2020.

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Copies of the financial disclosure report required by the Ethics in Government Act of 1978 are provided.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement

23. **Potential Conflicts of Interest**:

    a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

    In the event of any potential conflict, I will consult with the ethics officials for the Department of Justice and follow their guidance.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

    In the event of any potential conflict, I will consult with the ethics officials for the Department of Justice and follow their guidance.

24. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these

responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

For the past 9 years, beginning in 1997 and ending when I moved to Washington, D.C., in July of 2007, I have volunteered at least 60 hours per year at Genesis Women's Shelter. Genesis is a non-profit, community based, domestic violence service provider in Dallas, Texas, which provides emergency shelter, transitional housing, and outreach services (counseling, play therapy, job assistance, etc.) to victims of domestic violence and their children. On Monday or Tuesday evenings, I would volunteer at the shelter for several hours. I was available to the residents of the shelter and transitional housing to discuss and assist them with protective orders, police reports, filing criminal charges, etc. I also answered the hotline, assisted residents who were checking in or out, and watched children whose mothers went to therapy. This experience has allowed me to see the problem of domestic violence not only as a prosecutor, but also as a community based service provider.

U.S. Department of Justice

Washington, D.C. 20530

AUG 0 9 2007

Robert I. Cusick
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Mr. Cusick:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Cynthia D. Dyer, who has been nominated by the President to serve as the Director, Office on Violence Against Women. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. Section 208, requires that Ms. Dyer recuse herself from participating personally and substantially in a particular matter in which she, her spouse, or anyone whose interests are imputed to her under the statute has a financial interest. Ms. Dyer has been counseled and has agreed to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect her financial interests or those interests that are imputed to her.

We have advised Ms. Dyer that because of the standard of conduct on impartiality at 5 C.F.R. 2635.502, she should seek advice before participating in a particular matter involving specific parties which she knows is likely to have a direct and predictable effect on the financial interests of a member of her household, or in which she knows that a person with whom she has a covered relationship is or represents a party. Upon confirmation, Ms. Dyer will resign from her position on the Public Policy Committee, Texas Council on Family Violence. Pursuant to 5 C.F.R. 2635.502, she will not participate in any particular matter involving specific parties in which this organization is or represents a party for a period of one year from the date of her resignation unless she is authorized to do so. Morcover, pursuant to Section 502, Ms. Dyer will not participate in any particular matter involving specific parties in which her former employer, the State of Texas, or any county or municipal entity from Texas is a party for a period of one year from her resignation from the Dallas County District Attorney's Office unless she is authorized to do so. Finally, also pursuant to Section 502, Ms. Dyer will not participate in any particular matter involving specific parties in which her husband's employer, Sullivan Cook, LLC, is or represents a party unless she is authorized to do so.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Lee J. Lofthus
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

VerDate Nov 24 2008 12:13 Apr 02, 2009 Jkt 047206 PO 00000 Frm 00547 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\47206.TXT SJUD1 PsN: CMORC

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐	Termination Date (If Applicable) (Month, Day, Year)

	Last Name	First Name and Middle Initial
Reporting Individual's Name	Dyer	Cynthia
Position for Which Filing	Title of Position	Department or Agency (If Applicable)
	Director, Office on Violence Against Women	Department of Justice
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code)	Telephone No. (Include Area Code)
	133 N. Industrial Blvd., LB 19 Dallas, Texas 75207	214-653-3706
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	Senate Judiciary Committee	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Cynthia D. Dyer	7/6/07
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
	[illegible] M. [illegible]	7/13/07
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	[illegible]	8/9/07
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

Report reviewed with verbal OGE) based on information provided by the filer. Jennifer Levin Zachitis, PEO/OGE

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

47206.416

SF 278 (Rev. 01/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A	Page Number
Dyer, Cynthia D.		2 of 7

Assets and Income

BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period

BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

BLOCK C

	Asset	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Antenes Common			X													X						X										
	Doe Jones&Smith, HometownState		X																														
	Kempstone Equity Fund					X								X													X					Law Enforcement Income $1,000	
	IRA: Heartland 500 Index Fund							X							X																		
1	Sullivan Cook, LLC Dallas Texas (spouse)																															salary	
2	Dallas County District Attorney's Office, Dallas, Texas																															salary $78,098	
3	Alabama Coalition Against Domestic Violence																															honoraria $1350	July 2006
4	San Diego Justice Center Foundation, San Diego, California																															honoraria $900	Jan 2006
5	Texas County & District Retirement System (TCDRS) 401(a)				X									X														X					
6	Fidelity NH Portfolio 2018 (529 College Savings Plan)		X												X							X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Dyer, Cynthia D.

SCHEDULE A continued
(Use only if needed)

Page Number: 3 of 7

| Assets and Income (BLOCK A) | Valuation of Assets at close of reporting period (BLOCK B) | | | | | | | | | | | | | Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C) | | | | | | | | | | | | |

SF 278 (Rev. 03/2006)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Dyer, Cynthia D.

SCHEDULE A continued
(Use only if needed)

Page Number: 4 of 7

Assets and Income

BLOCK A

Valuation of Assets at close of reporting period

BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.

BLOCK C

	BLOCK A	Valuation of Assets at close of reporting period (BLOCK B)												Type				Amount											Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000		
1	Fidelity Mid Cap Growth II		X														X														
2	-PSI Small Company Blend		X														X														
3	-PSI Diversified International		X														X														
4	-Guaranteed Interest Account		X																												
5	Prime Fund Capital Class		X																X												
6																															
7																															
8																															
9																															

(JNE)

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE C	Page Number
Dyer, Cynthia D.		5 of 7

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [x]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [ ]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	TCDRS Retirement Plan - no further contributions by former employer or filer upon		11/93
2	resignation		
3			
4			
5			
6			

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47206.420

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	33	343,	07	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule First Horizon Financial	195	074,	25
Real estate owned-add schedule Residence owned in Dallas, Texas	322	250,	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	72	100,	00	Honda Car Lease	12	499,	25
Cash value-life insurance				Rental house in Alexandria, Virginia	38	000,	00
Other assets itemize:	11	056,	00	School Tuition	21	937,	00
Texas County and District Retirement System	75	016,	31				
Husband's Retirement Plan	79	779,	75				
College Savings Plan	12	074,	92	Total liabilities	267	510,	50
				Net Worth	338	109,	55
Total Assets	605	620,	05	Total liabilities and net worth	605	620,	05
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor No				Are any assets pledged? (Add schedule) No			
On leases or contracts No				Are you defendant in any suits or legal actions? No			
Legal Claims No				Have you ever taken bankruptcy? No			
Provision for Federal Income Tax No							
Other special debt No							

Senator CARDIN. Nathan Hochman has already been introduced by Senator Coleman, so I will allow Mr. Hochman to make his opening presentation.

STATEMENT OF NATHAN J. HOCHMAN, NOMINEE TO BE AN ASSISTANT ATTORNEY GENERAL, TAX DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. HOCHMAN. Thank you, Mr. Chairman. It is a great honor to be before this committee as the President's nominee to be the Assistant Attorney General for the Tax Division in the Department of Justice.

As a former Assistant U.S. Attorney and tax practitioner for almost 20 years, I hold the Tax Division in the highest regard. The Tax Division is one of the premier divisions of litigators in the Department of Justice and has enjoyed a long tradition of excellence since its inception over 70 years ago. If I am so fortunate to have my nomination recommended by this committee and to be confirmed by the Senate, I can assure you that I will devote my full abilities, energy, and enthusiasm to continue the Tax Division's long tradition of excellence.

I am very fortunate today to be joined by dear friends and my family: my wonderful mother, Harriet Hochman, who is a civic leader in my hometown of Los Angeles; my wife and best friend, Vivienne; my brother David, who flew all night to be here from California; my sons, Tyler and Harrison, who are studying government in school and now get to see it in action. My 6-year-old daughter, unfortunately, is back home holding down the fort.

Unfortunately, two people who mean so much to me are not here: my wonderful father-in-law, Victor Vella, and my father, Bruce Hochman. My dad was an immigrant to this country. He was an Assistant U.S. Attorney himself. He was an Air Force captain in the JAG Corps. Through his intellect, will, and determination, he was able to take advantage of the opportunities that this country offered him to be one of the premier tax lawyers for over 50 years. He would love to have been here today to see his son considered for such an opportunity to serve the country that he cherished so much.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Nathan Joseph Hochman

2. **Position**: State the position for which you have been nominated.

   Assistant Attorney General for the Tax Division in the United States Department of Justice

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Hochman, Salkin, Rettig, Toscher & Perez, P.C.
   9150 Wilshire Boulevard, Ste 300
   Beverly Hills, CA 90212

4. **Birthplace**: State date and place of birth.

   1963, Los Angeles, California

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married to Vivienne Vella, who is an attorney working at Telepictures Productions, 3500 West Olive Avenue, Ste 1000, Burbank, CA 91505. We have three dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Stanford Law School, September 1985 – June 1988, Juris Doctor, June 1988

   University of Tokyo, June 1986 – August 1986, no degree

   Brown University, September 1981 – June 1985, Bachelor of Arts, June 1985

London School of Economics and Political Science, September 1983 – June 1984, no degree

University of California at Los Angeles, Summer 1982, no degree

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Hochman, Salkin, Rettig, Toscher & Perez, P.C.
9150 Wilshire Boulevard, Ste 300
Beverly Hills, CA 90212
Principal (1997-present)

Cedar Sinai Medical Center
Board of Governors (2002-present)

Stanford Law School
Board of Visitors (2006-present)

American Jewish University
Executive Board (2006-present)

Brandeis-Bardin Institute
Secretary, Board of Directors, Board of Governors (1999-2007)

Jewish Federation of Greater Los Angeles
Board of Directors (2001-present)

Jewish Community Foundation
Board of Directors (2002-present)

United Jewish Fund, Legal Services Division
Executive Board (1990-present)

American Jewish Committee
Board of Directors (Los Angeles) (2007-present)

SFG, Inc.
9150 Wilshire Boulevard, Ste 300
Beverly Hills, CA 90212
Board of Directors (1995-present)

SFG-1, LLC
9150 Wilshire Boulevard, Ste 300
Beverly Hills, CA 90212
Board of Directors (1997-present)

Synergized Properties, LLC
9150 Wilshire Boulevard, Ste 300
Beverly Hills, CA 90212
Co-Manager (2001-present)

H & S Investments, LLC
9150 Wilshire Boulevard, Ste 300
Beverly Hills, CA 90212
Co-Manager (2001-present)

Virtual Anchor TV, LLC
9150 Wilshire Boulevard, Ste 300
Beverly Hills, CA 90212
Co-President (2005-present)

Titan Organization, LLC
633 West Fifth Street, 56th Floor
Los Angeles, CA 90071
Secretary, Board of Directors (2006-present)

Rodmark, LLC
633 West Fifth Street, 56th Floor
Los Angeles, CA 90071
Secretary (2005-2006)

United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, CA 90012
Assistant United States Attorney (1990-1997)
Public Corruption and Government Fraud Section (1992-1997)
Los Angeles Disaster Fraud Task Force Coordinator (1994-1997)
Environmental Crimes Coordinator (1994-1996)

Honorable Stephen V. Wilson
United States District Judge, Central District of California
312 North Spring Street
Los Angeles, CA 90012
Law Clerk (1988-1989)

47206.473

Gibson, Dunn & Crutcher
333 South Grand Avenue, 45th Floor
Los Angeles, CA 90017
Summer Associate (1987)

Hashidate Law Office
Tokyo, Japan
Summer Associate (Summer 1986)

Stanford University
Stanford, California 94305
Teaching Assistant (1986-1988)

Honorable Manuel L. Real
United States District Judge, Central District of California
312 North Spring Street
Los Angeles, CA 90012
Law Intern (Summer 1985)

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

   I have not served in the military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Phi Beta Kappa Honor Society, 1985

   Graduated with distinction, Stanford Law School, 1988

   Director's Award for Superior Performance As an Assistant United States Attorney, 1996

   Federal Bar Association's Younger Federal Lawyer Award, 1996

   Inspector General's Award, U.S. Department of Housing and Urban Development, 1996

   Federal Law Enforcement Officers Association's Prosecutorial Award, 1996

   Inspector General's Award of Excellence, U.S. Small Business Administration, 1996

   Office of Inspector General, U.S. Department of Education's Prosecutorial Award, 1997

   Edgar Magnin Award for Community Service, Hillcrest Country Club, 1998

Brandeis-Bardin Institute Annual Honoree, 2007

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

ABA Los Angeles White Collar Crime Committee
Chair, Tax Crimes (2006 to present)
Chair, Computer Crimes (1998-2000)

Federal Bar Association
Board of Directors, Los Angeles Chapter (2002-03)

Los Angeles County Bar Association

Beverly Hills Bar Association

Attorney Admissions Committee, United States District Court, Central District of California (1998-1999)

Standing Committee on Discipline, United States District Court, Central District of California (2007 to present)

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

State of California, December 1988
There were no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

State of California, 1988
United States District Court, Central District of California, 1988
United States District Court, Northern District of California, 2002
United States District Court, Eastern District of California, 1998
United States District Court, Southern District of California, 1999

United States Court of Appeals for the Ninth Circuit, 1990
United States Court of Federal Claims, 2004
United States Tax Court, 2005

There were no lapses in membership.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Cedar Sinai Medical Center
Board of Govenors (2002-present)

Stanford Law School
Board of Visitors (2006-present)

American Jewish University
Executive Board (2006-present)

Brandeis-Bardin Institute
Secretary, Board of Directors, Board of Governors (1999-2007)

Jewish Federation of Greater Los Angeles
Board of Directors (2001-present)

Jewish Community Foundation
Board of Directors (2002-present)

United Jewish Fund, Legal Services Division
Executive Board (1990-present)

American Jewish Committee
Board of Directors (Los Angeles) (2007-present)

Jewish Community Relations Committee (1997-2003)

Hillcrest Country Club (1974-present)

Wexner Heritage Foundation
Fellow (1997-1999)

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b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, the organizations listed in response to 12(a) do not currently discriminate or formerly discriminated on the basis of race, sex, or religion either through formal membership requirements or the practical implementation of membership policies.

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

"'Murphy'" Lets Successful Plaintiffs Keep All Their Damages," Los Angeles Daily Journal, Sept. 15, 2006

"Cash Received Up Front Isn't Necessarily Taxable Income," Los Angeles Daily Journal, Sept. 1, 2006

"How the IRS Distinguishes Civil and Criminal Tax Fraud," Los Angeles Lawyer, Oct. 2003 (with Dennis Perez)

"Form 8300: What Every Trade or Business Operator Should Know," Journal of Tax Practice and Procedure, June-July 2002 (with Sharon Hakimfar)

"Tax Crimes," BNA Tax Management, 1999 (with co-authors)

"Not a Good Bet: The Escalation of Federal Enforcement Measures Is Unlikely to Stem the Tide of Offshore Internet Betting," Los Angeles Lawyer, Oct. 1998

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Not applicable.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Not applicable.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have spoken on a number of panels relating to tax and criminal matters over the last 15 years, sponsored by the State Bar of California Taxation Section, the Beverly Hills Bar Association, the Rotary Club (Los Angeles), the Office of Inspector General for the Commerce Department, and the Legal Services Division of the United Jewish Fund. I do not have copies of my remarks. The summary of the subject matter I would have discussed includes discussions about the procedures involved in the initiation, investigation, prosecution, trial, sentencing and defense of a tax and/or criminal matter

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

While I was an Assistant United States Attorney from 1990-1997, I periodically gave statements about the cases I was prosecuting to newspapers, radio and television stations. I have attached copies of the statements I could locate.

Since 1997, I have given statements to newspapers and more rarely radio stations concerning the cases I have defended. I have attached copies of the statements I could locate.

I was interviewed in connection several articles outside of my professional activities and have attached copies of the articles I could locate:

"Here and Gone," Jewish Journal of Los Angeles, April 1, 2005.

"GOP Sees Israel as Way to Woo Democratic Jews," Jewish Journal of Los Angeles, September 1, 2006.

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"A Second Generation Visits Ethiopia," Jewish Federation of Greater Los Angeles newsletter, May 2006.

"The Age of Aquariums," Los Angeles Daily News, March 9, 2007.

14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Assistant United States Attorney
Central District of California
1990-1997
Appointed by Attorney General Dick Thornburgh

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Republican National Committee

Republican Jewish Coalition

I raised money for President George W. Bush in 2004 as well as raised money for the Senate campaigns of Mark Kennedy, Michael Steele, and Joseph Lieberman in 2006.

15. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

United States District Judge Stephen V. Wilson
Central District of California
Law clerk, 1988-1989

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ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

iii.the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Hochman, Salkin, Rettig, Toscher & Perez, P.C.
9150 Wilshire Boulevard, Ste 300
Beverly Hills, CA 90212
Principal (1997-present)

United States Attorney's Office
Central District of California
312 North Spring Street
Los Angeles, CA 90012
Assistant United States Attorney (1990-1997)

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

As an Assistant United States attorney from 1990-1997, the general character of my law practice involved representing the United States in magistrate, district and appellate courts in the Central District of California and the Ninth Circuit Court of Appeals. I was involved in: (i) conducting grand jury investigations, (ii) supervising law enforcement agents in all aspects of their investigations, (iii) responding to and filing pretrial motions, (iv) trying cases; (v) filing sentencing motions and appearing at sentencing hearings, (vi) responding to post-trial motions and (vii) writing and arguing appeals before the Ninth Circuit Court of Appeals.

Since 1997, in private practice, I have represented individuals and organizations in federal and state investigations; in civil, administrative, grand jury and tax and criminal proceedings; at trials, and on appeals. I have also worked as a court-appointed federal Receiver in several matters.

ii. your typical clients and the areas, if any, in which you have specialized.

From 1990-1997, my client was the United States of America. From 1992-1997, I worked in the Public Corruption and Government Fraud Section and investigated and prosecuted cases ranging from tax fraud, loan fraud, bank fraud, money laundering, healthcare fraud, customs

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fraud, bribery, Lacey Act violations, and government program fraud. I was the Coordinator of the Los Angeles Disaster Fraud Task Force and the Environmental Crimes Coordinator.

Since entering private practice in 1997, my typical clients have had a variety of criminal and civil tax problems, and have either sought my counsel in connection with an audit, a summons, a grand jury subpoena, an investigation, an indictment, a trial, a sentencing and/or an appeal.

I have been a Certified Specialist in Criminal Law, as certified by the California Board of Legal Specialization of the State Bar of California, since March 1999.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Approximately 90% of my legal practice has been in litigation.

As an Assistant United States Attorney from 1990-1997, I appeared in court very frequently. Since leaving the United States Attorney's Office in 1997, I appear in court regularly, though less frequently than before.

i. Indicate the percentage of your practice in:

1. federal courts	85%
2. state courts of record	10%
3. other courts	5%

ii. Indicate the percentage of your practice in:

1. civil proceedings	25%
2. criminal proceedings	75%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried to verdict or judgment approximately 25 cases where I was either sole or chief counsel.

i. What percentage of these trials were:

1. jury	88%
2. non-jury	12%

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e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Tariq Ahmad and Rafat Asrar, CR 92-201-RSLW (C.D. Cal. 1992-93), United States District Judge Ronald S.W. Lew, Central District of California

This case marked the first jury conviction for the illegal exportation of hazardous waste. I co-tried this case with another federal prosecutor and was very involved in the investigation, indictment, pre-trial motions, trial and sentencing. After a multi-week trial, the defendants were convicted on all counts of committing arson, mail fraud, money laundering, the illegal transportation and exportation of hazardous waste, and perjury. The scheme involved setting fire to the defendants' chemical lab, filing false insurance claims, laundering the insurance proceeds, transporting the destroyed chemicals without the proper permit, illegally exporting them on a ship bound for Pakistan to dump down a mine, and then lying about it to the grand jury. Defendant Ahmad was sentenced to 97 months imprisonment and Defendant Asrar was sentenced to 60 months imprisonment.

Co-Counsel: Stephen Mansfield
Currently at Akin, Gump, Strauss,
Hauer & Feld LLP
2029 Century Park East, 24th Fl.
Los Angeles, CA 90067
(310) 229-1019

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Opposing counsel: Richard Steingard (Asrar)
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street
Los Angeles, CA 90071
(213) 620-1780

Opposing counsel: Lawrence Semenza (Ahmad)
1681 East Flamingo Road, Ste 3
Las Vegas, NV 89119
(702) 369-6999

2. United States v. Stephen Cook, CR 94-281-R (C.D. Cal. 1994)
United States District Judge Manuel Real, Central District of California

This case marked at the time the longest sentence handed down in a Lacey Act prosecution. I was sole counsel for the United States and conducted the investigation, handled all pre-trial motions, tried the case, and argued the sentencing. Defendant Cook was convicted by a jury on all counts of illegally transporting and importing endangered wildlife (Mexican red knee tarantulas) from Mexico into the United States. He received a sentence of 105 months imprisonment.

Opposing counsel: Sean Kennedy
Federal Public Defender
321 East 2nd Street
Los Angeles, CA 90012
(213) 894-2854

3. United States v. Richard Ballestros, CR 93-800-MRP (C.D. Cal. 1993-94)
United States District Judge Marianna Pfaelzer, Central District of California

This case was one in a series of corruption prosecutions brought against the against elite members of the anti-narcotics unit of the Los Angeles County Sheriffs Department. I co-tried this case with another prosecutor and was very involved with its investigation, pre-trial motions, and trial. The first trial ended in a hung jury and the second trial resulted in a conviction (I was only involved in the first trial). Defendant Ballestros received a five month sentence of imprisonment.

Co-counsel: Stefan Stein
Currently at Qwest
Communications International, Inc.
1801 California Street
Denver, Colorado 80202
(303) 992-1400

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Opposing counsel: Donald Re
624 S. Grand Avenue, 22nd Fl.
Los Angeles, CA 90017
(213) 623-4234

4. United States v. Faramarz Javidzad, CR 95-35-R (C.D. Cal. 1995)
United States District Judge Manuel Real, Central District of California

The case represented the largest SBA loan fraud case emanating from the January 1994 earthquake. I was the sole counsel for the United States and fully responsible for the investigation, indictment, guilty plea and sentencing. Nine defendants were convicted and Defendant Javidzad received a sentence of 78 months imprisonment.

Opposing counsel: Jerry Kaplan
9150 Wilshire Boulevard, Ste 175
Beverly Hills, CA 90212
(310) 859-7773

5. United States v. Cavour Yeh, Richard Yeh, Victoria Hsia, and Wei Li, CR 91-712-HLH (C.D. Cal. 1991-1992), United States District Judge Harry Hupp, Central District of California

This case represented one of the largest research grant frauds ever prosecuted in the district. I was sole counsel for the United States and responsible for the investigation, indictment, pre-trial motions, guilty pleas, and sentencing. Defendant Cavour Yeh was a UCLA Professor of Electrical Engineering who defrauded the government out of millions of dollars over seven years and used his family members to facilitate his crime. All defendants were convicted. Defendant Cavour Yeh received a sentence of 24 months imprisonment and paid back the ill-gotten funds he received.

Opposing counsel: Brian O'Neill (Cavour Yeh)
Jones Day
555 South Flower Street, 50th Fl.
Los Angeles, CA 90017
(213) 489-3939

Thomas Holliday (Richard Yeh)
Gibson, Dunn & Crutcher
333 South Grand Avenue, 45th Fl.
Los Angeles, CA 90017
(213) 229-7000

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Douglas Dalton (Victoria Hsia)
555 South Flower Street, 2nd Fl.
Los Angeles, CA 90017
(213) 955-1605

Mark Heaney (Wei Li)
Law Offices of Barry Tarlow
9119 Sunset Boulevard
Los Angeles, CA 90069
(310) 278-2111

6. United States v. Daniel Ekman, CR 93-165-JGD (C.D. Cal. 1992-1993) United States District Judge John Davies, Central District of California

This case represented one of the largest corruption cases ever brought against a United States Custom Inspector in this district. I was the sole counsel for the United States and was responsible for the investigation, charging the case, the guilty plea, and the sentencing. Over $1 million in bribe proceeds were found and seized in Defendant Ekman's garage. Defendant Ekman received a sentence of three years imprisonment.

Opposing Counsel: Paul DePasquale
523 W. 6th Street, Ste 1228
Los Angeles, CA 90014
(213) 629-3550

7. United States v. Richard Li, CR 95-243-DT (C.D. Cal. 1995), United States District Judge Dickran Tevrizian, Central District of California

This case marked the first successful prosecution for illegal export of military surplus equipment in violation of the Arms Export Control Act. I was the sole counsel for the United States and was responsible for the investigation, charging the case, the guilty plea, and the sentencing. Defendant Li received a sentence of a year and a day imprisonment.

Opposing Counsel: Howard Weintraub
1355 Peachtrec St., NE, Ste 1520
Atlanta, GA 30309
(404) 892-2000

8. United States v. William Robert Bradley, CR 05-1474-BTM (S.D. Cal. 2005-2006), United States District Judge Barry Ted Moskowitz, Southern District of California

This case involved a prosecution for corporate, personal, and private foundation tax fraud involving millions of dollars. I was sole counsel for Defendant Bradley,

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one of the founders of Metabolife, through all phases of the investigation, guilty plea and sentencing. After arguing all the factors under 18 U.S.C. § 3553(a), Defendant Bradley received a six month sentence of incarceration.

Opposing Counsel: Phillip Halpern
Assistant United States Attorney
U.S. Attorney's Office
880 Front Street, Room 6293
San Diego, CA 92101
(619) 557-5165

9. United States v. Letantia Bussell and John Bussell, SA CR 00-485-AHS (C.D. Cal. 2000-2002), United States District Judge Alicemarie Stotler, Central District of California

This case involved the prosecution of two doctors (husband and wife) for tax evasion, bankruptcy fraud, money laundering, and perjury. I was sole counsel for Defendant Letantia Bussell and involved in all pre-trial motions, interlocutory appeals, and the trial. I did not represent Defendant Letantia Bussell at sentencing or on appeal. The case involved complicated issues of attorney-client privilege and the crime fraud exception since defendants' two lawyers were used by the Government as witnesses against them. After a nine week trial, Defendant Letantia Bussell was acquitted on several counts and convicted on others; Defendant John Bussell committed suicide. Defendant Letantia Bussell was sentenced to three years imprisonment.

Counsel for Co-Defendant: H. Dean Steward
107 Avenida Miramar #C
San Clemente, CA 92672
(949) 481-4900

Opposing Counsel: Ranee Katzenstein and Paul Stern
Assistant United States Attorneys
312 North Spring Street
Los Angeles, CA 90012
(213) 894-2434

10. United States v. Daniel Rung, CR 02-1312-GAF (C.D. Cal. 2002-2004), United States District Judge Gary Feess, Central District of California

This case involved the prosecution of a multi-million dollar tax and telemarketing fraud scheme. I was the sole counsel for Defendant Rung and responsible for representing him during the investigation, guilty plea and sentencing. After Defendant Rung pleaded guilty, he cooperated with the Government for several years in a number of tax and computer prosecutions all over the country that resulted in scores of convictions. As a result of his substantial and significant

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cooperation, Defendant Rung received a probationary sentence with six months of home detention

Opposing counsel:

Julie Werner Simon
Assistant United States Attorney
U.S. Attorney's Office
312 North Spring Street
Los Angeles, CA 90012
(213) 894-2274

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While an Assistant United States Attorney, the most significant legal activities that I pursued included being the Coordinator of the Los Angeles Disaster Fraud Task Force and the Environmental Crimes Coordinator. Following the January 1994 Northridge Earthquake, I created and spearheaded the Los Angeles Disaster Fraud Task Force that brought together 40 law enforcement agents from 10 different federal agencies to prosecute government disaster relief fraud emanating from the earthquake as well as from other federally declared disasters involving fires, riots and floods. I personally prosecuted over 70 individuals who defrauded the government's disaster relief programs, recovering over $16 million through deterrent efforts.

As the Environmental Crimes Coordinator, I helped lead a task force that included federal, state, and local law enforcement agents from 15 different agencies that brought cases against violators of environmental laws protecting the land, waters, and endangered plant and wildlife.

While in private practice, I have been appointed by the Chief United States District Judge of the Central District of California to two committees, the Attorney Admissions Committee and the Standing Committee on Discipline. These committees have involved attending regular meetings with district and magistrate judges and other lawyer representatives and reviewing and commenting on issues brought before the committees.

In addition, I have chaired the Computer Crimes and Tax Crimes Subcommittees of the American Bar Association White Collar Crime Committee in Los Angeles. Through these subcommittees, I arranged panel presentations or provided updates on topical issues to committee members.

I also served for two years as the Legal Advisor to the Chair of the Jewish Federation of Greater Los Angeles. In that capacity, I provided legal advice on the myriad of issues that came before the Chair.

I recently was invited to join the Board of Visitors at Stanford Law School. Since 2006, I have annually met with the Dean and faculty members to assess and discuss the various aspects of the law school.

I have not performed any lobbying activities on behalf of any client or organization I have represented.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

    I was a teaching assistant at Stanford University, while I attended Stanford Law School between 1985-1988, for five undergraduate introductory courses on American history, American law, International Relations, and American government.

    Over the last ten years, I have been a guest lecturer speaking on subjects of federal criminal law at the UCLA School of Law, the USC School of Law, and Loyola School of Law.

19. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

    I have a Thrift Savings Plan with the government, established when I worked as an Assistant United States Attorney from 1990-1997, with approximately $65,000 that I intend to leave in place for the foreseeable future since I do not intend to draw from this plan for at least 15 years.

    I am a participant in the following retirement plans of Hochman, Salkin, Rettig, Toscher & Perez , P.C. which will have the following approximate account balances by the end of 2007: HSRTP Profit Sharing Plan (approximately $340,000), HSRTP Profit Sharing Plan No. 2 (approximately $130,000), and HSRTP Cash Balance Pension Plan (approximately $100,000). I intend to resign from the law firm upon confirmation and no further contributions will be made into these plans from the date of my resignation. I intend to leave these profit sharing plans and cash balance pension plan in place for the foreseeable future since I do not intend to draw from them for at least 15 years.

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20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

    I have no such plans, commitments, or agreements.

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

    See attached Financial Disclosure Report.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

23. **Potential Conflicts of Interest**:

    a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

    In the event of a potential conflict of interest, I would consult with the Department of Justice Ethics Official and would follow their guidelines.

24. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

    While an Assistant United States Attorney, I worked with the Constitutional Rights Foundation and other prosecutors and helped coach a mock trial team for a magnet school in east Los Angeles. I also spoke at several schools in disadvantaged neighborhoods and to many classes that toured the courthouse about how the federal criminal justice system worked.

In both government and private practice, I have worked with and helped raised funds for numerous non-profit groups that help the disadvantaged, including groups that provide free legal services, food pantries for the homeless, Big Brothers, reading programs for children, and camp programs for the physically and emotionally challenged. I was Co-Chair of the Legal Services Division of the United Jewish Fund in Los Angeles for two years that annually raised more than $3 million to support over 50 affiliated agencies and departments serving, among others, the poor, the elderly, the young, and the sick.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		87	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	364	000	Notes payable to relatives			
Unlisted securities--add schedule		37	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		923	000
Real estate owned-add schedule	2	900	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance							
Other assets itemize:	5	935	000				
(See schedule)							
				Total liabilities		923	000
				Net Worth	9	550	000
Total Assets	10	473	000	Total liabilities and net worth	10	473	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	1	200	000	Are any assets pledged? (Add schedule)	NO		
On leases or contracts	NO			Are you defendant in any suits or legal actions?	NO		
Legal Claims	NO			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	NO						
Other special debt	NO						

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FINANCIAL STATEMENT
NET WORTH SCHEDULES

Real Estate Owned	
Personal Residence (Beverly Hills, CA)	$2,900,000
Real Estate Mortgage Payable	
Personal Residence (Countrywide)	$923,000
Listed Securities	
Mutual Funds	$814,000
Fidelity Equity Income II	
Sound Shore Fund	
Goldman Sachs Mid-Cap Value	
Third Avenue Value Fund	
American Century Small Cap Value	
Dodge & Cox International Stock	
Excelsior Value and Restructuring	
Julius Baer International Equity II	
Matthews International Tech Fund	
Vanguard Health Care	
iShares DJ US Energy	
Consumer Staples Select Sector SPDR	
Oil Service Holders TR Depostry Rcpt	
Vanguard CA Tax Exempt Money Market	
Vanguard CA IT Tax Exempt Investor Bond	
Vanguard CA LT Tax Exempt Admiral Bond	
Short-Term Investments	
Federal Home Loan Bank Gov't Obligations	$125,000
Stocks	
Adobe Systems, Inc.	$17,000
Biogen IDEC, Inc.	$20,000
Cisco Systems	$13,000
Qualcomm, Inc.	$16,000
Johnson & Johnson	$13,000
Microsoft Corp.	$11,000
Time Warner, Inc.	$4,000
Hypertension Diagnostics, Inc.	$45,000
ExchangeBlvd.com	$24,000
California Municipal Bonds	$120,000
John Hancock Freedom 529 Plans	$142,000
Total Listed Securities:	$1,364,000

Unlisted Securities	
Virtual Anchor TV, LLC Stock	$0
Adina for Life, Inc. Stock	$25,000
Titan Organization, Inc. Stock	$12,000
Total Unlisted Securities:	$37,000
Other assets	
Hochman Children Present Interest Trust	$1,382,000
Nathan Hochman 1987 Trust	$3,554,000
SFG, Inc.	$43,000
SFG-I, LLC	$76,000
H & S Market, L.P.	$23,000
Gores FF Partners, L.P.	$37,000
Hochman, Salkin, Rettig, Toscher & Perez	
Profit Sharing and Cash Balance Pension Plans	$570,000
Time Warner Thrift Plan	$285,000
Thrift Savings Plan	$65,000
Total Other Assets:	$5,935,000

Contingent Liability
Guarantor of $1.2 million on a business bank loan for the Titan Organization, Inc.

47206.493

U.S. Department of Justice

Justice Management Division

Departmental Ethics Office

Washington, D.C. 20530

Robert I. Cusick
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Mr. Cusick:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Nathan J. Hochman, who has been nominated by the President to serve as Assistant Attorney General, Tax Division, U.S. Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. Hochman recuse himself from participating personally and substantially in any particular matter that has a direct and predictable effect on his financial interests or the financial interests of any other person whose interests are imputed to him, unless he first obtains a written waiver, pursuant to Section 208(b)(1), or qualifies for a regulatory exemption, pursuant to Section 208(b)(2). Mr. Hochman understands that the interests of the following persons are imputed to him: his spouse; minor children; any general partner; any organization in which he serves as an officer, director, trustee, general partner or employee; and any person or organization with which he is negotiating or has an arrangement concerning prospective employment. Mr. Hochman further understands that he has a financial interest in the following trusts identified on Schedule D in which he serves as Trustee, and from which he receives no fees for his services:

Hochman Family Trust Share A
Hochman Family Trust Share B
Hochman Family Trust Share C
Hochman Children Present Interest Trust
Nathan Hochman 1987 Trust
David Hochman 1987 Trust
Nancy Hochman 1987 Trust
Jennifer Hochman 1987 Trust
Hochman Family 2003 Trust

In determining whether a particular matter has a direct and predictable effect on his financial interests or on those of any other person whose interests are imputed to him, Mr. Hochman will consult with Department of Justice ethics officials.

We have advised Mr. Hochman that because of the standard of conduct on impartiality at 5 C.F.R. 2635.502, he should seek advice before participating in a particular matter involving specific parties which he knows is likely to have a direct and predictable effect on the financial interests of a member of his household, or in which he knows that a person with whom he has a covered relationship is or represents a party. Upon confirmation, Mr. Hochman will resign from all of the positions listed on Schedule D, except for his position as a member of the Board of Visitors, Stanford Law School, and his position as Trustee of the family trusts specifically identified above.

Pursuant to 5 C.F.R. 2635.502, Mr. Hochman will not participate in any particular matter involving specific parties in which any one of the organizations listed on Schedule D from which he resigns is or represents a party for a period of one year from the date of his resignation unless he is authorized to do so. In addition, Mr. Hochman understands that for at least one year from the date he last performed services for any former client, he will not participate in any particular matter involving specific parties in which the former client is or represents a party to such matter, unless he is authorized to do so. Similarly, Mr. Hochman will not participate in any particular matter involving specific parties in which his former employer is or represents a party, for at least one year from the date he resigns from his employer, unless he is authorized to do so. In addition, Mr. Hochman will not participate in any particular matter involving specific parties in which Stanford University or Stanford Law School is or represents a party unless he is authorized to do so.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Lee J. Lofthus
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*

Reporting Individual's Name	Last Name	First Name and Middle Initial
	HOCHMAN	NATHAN J.
Position for Which Filing	Title of Position	Department or Agency *(If Applicable)*
	Assistant Attorney General for the Tax Division	Department of Justice
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*	Telephone No. *(Include Area Code)*
	9150 Wilshire Boulevard, Ste 300, Beverly Hills, CA 90212	310-281-3200
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held	
	N/A	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	Committee on Judiciary	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date *(Month, Day, Year)*
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.		10/12/07
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
	Lori H. Rodden	11/19/07
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).		11/20/07
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days ———) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A	Page Number
HOCHMAN, NATHAN J.		2 , 42

| Assets and Income (BLOCK A) | Valuation of Assets at close of reporting period (BLOCK B) | | | | | | | | | | | | | | | Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C) | | | | | | | | | | | | | | |

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
HOCHMAN, NATHAN J.		3 of 42

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)																Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																	
																	Type					Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Qualcomm Inc Stock			X																	X													
2 Time Warner Inc Stock						X														X													
3 American Century Small Cap Value Mutual Fund			X										X							X													
4 Dodge & Cox Intl Stock Mutual Fund				X									X							X													
5 Excelsior Value and Restructuring Mutual Fund				X									X							X													
6 Fidelity Equity Income II Mutual Fund			X										X							X													
7 Goldman Sachs Mid Cap Mutual Fund			X										X							X													
8 Julius Baer Int'l Equity Mutual Fund			X										X							X													
9 Matthews Asian Tech Mutual Fund			X										X							X													

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
HOCHMAN, NATHAN J.		4 of 32

Assets and Income	Valuation of Assets at close of reporting period														Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																
BLOCK A	BLOCK B														BLOCK C																
															Type				Amount												
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Sound Shore Fund Inc Mutual Fund			X										X							X											
2 Third Avenue Value Mutual Fund				X									X							X											
3 Vanguard Health Care Mutual Fund			X										X							X											
4 iShares TR DJ US Energy		X											X							X											
5 Oil Service Holders TR F			X										X							X											
6 Sector SPDR TR CON STPLS			X										X							X											
7 Templeton Foreign 529 C2			X										X							X											
8 T Rowe Price Blue Chip Growth 529 C2			X										X							X											
9 John Hancock Portfolio 2021-2024 C2				X									X							X											

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
HOCHMAN, NATHAN J.		5 of 42

Assets and Income	Valuation of Assets at close of reporting period													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.															
BLOCK A	BLOCK B													BLOCK C														
														Type				Amount										
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 CA Muni Cash Trust Service Sh (money market account)		X																X												
2 Hesperia Calif Uni Sch Spl Tax Bond			X														X				X									
3 Lincoln Calif Ltd Oblig Foskett Ranch Bond				X													X				X									
4 Adina for Life, Inc., Stock (beverage company, San Francisco, CA)			X																X											
5 Titan Organization, LLC stock (real estate development company, Los Angeles, CA)				X															X											
6 Hypertension Diagnostics, Inc. (medical device company, St. Paul, Minn.)			X																X											
7 ExchangeBlvd.com Stock					X														X											
8 Vanguard CA Tax-Exempt Money Market Fund						X							X											X						
9 Vanguard CA IT Tax-Exempt Investor Bond Fund					X								X										X							

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
HOCHMAN, NATHAN J.		6 of 42

| Assets and Income (BLOCK A) | Valuation of Assets at close of reporting period (BLOCK B) | | | | | | | | | | | | | | | Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C) | | | | | | | | | | | | | | |

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
HOCHMAN, NATHAN J.		7 of 42

Assets and Income	Valuation of Assets at close of reporting period												Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.														
BLOCK A	BLOCK B												BLOCK C														
													Type				Amount										
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Exempted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings: (see Exh. A, #10)																														
2 -- Union Bank of CA checking account						X											X				X									
3 -- Vanguard CA IT Tax-Exempt Fund										X			X												X					
4 -- Vanguard CA LT Tax-Exempt Fund							X						X										X							
5 -- 3M Company stock			X																X											
6 -- Air Products & Chemicals, Inc. stock		X																	X											
7 -- American Int'l Group, Inc. stock		X																	X											
8 -- Amgen, Inc. stock			X																X											
9 -- Apollo Group, Inc. stock		X																	X											

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
HOCHMAN, NATHAN J.		8 of 42

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																
																Type				Amount											
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings (cont'd):																															
2 – Apple, Inc. stock			X																	X											
3 – Arch Coal, Inc. stock			X																	X											
4 – Bank of America, Inc. stock		X																		X											
5 – Berkshire Hathaway Inc. stock			X																	X											
6 – Boston Scientific Group stock			X																	X											
7 – Broadcom Corp stock		X																		X											
8 – Canadian Nat Resources Ltd stock			X																	X											
9 – Celgene Inc. stock		X																		X											

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																					
																Type				Amount																	
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings (cont'd):																																			
2 -- Citigroup stock			X																	X														
3 -- Colgate Palmolive Co stock			X																	X														
4 -- Clorox Co stock		X																		X														
5 -- Dover Inc. stock		X																		X														
6 -- Eli Lilly & Co stock			X																	X														
7 -- Exxon Mobil Corp stock		X																		X														
8 -- General Electric stock			X																	X														
9 -- Grant Prideco Inc stock			X																	X														

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
HOCHMAN, NATHAN J.		10 of 42

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)														Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																
															Type				Amount											
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings (cont'd):																															
2 – Honeywell Int'l Inc stock			X																X												
3 – Intel Corp stock			X																X												
4 – JPMorgan Chase & Co stock		X																	X												
5 – Marshall & Ilsley Corp stock			X																X												
6 – Medtronic Inc. stock			X																X												
7 – Network Appliance Inc. stock			X																X												
8 – Newfield Exploration Co stock		X																	X												
9 – Nokia Corp stock			X																X												

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Assets and Income	Valuation of Assets at close of reporting period													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																	
BLOCK A	BLOCK B													BLOCK C																	
														Type				Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings (cont'd):																															
2 -- Novartis AG stock			X																	X											
3 -- O Reilly Automotive Inc. stock		X																		X											
4 -- Procter & Gamble Co stock		X																		X											
5 -- Pepsico Inc. stock		X																		X											
6 -- Qualcomm Inc. stock			X																	X											
7 -- Schlumberger Ltd stock		X																		X											
8 -- Southwestern Energy Co stock			X																	X											
9 -- Staples Inc. stock		X																		X											

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Assets and Income	Valuation of Assets at close of reporting period													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.															
BLOCK A	BLOCK B													BLOCK C														
														Type				Amount										
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings (cont'd):																															
2 – Varian Medical Systems Inc stock		X																		X											
3 – Wells Fargo & Co stock		X																		X											
4 – Wesco In'l Inc stock		X																		X											
5 – Western Union Co stock			X																	X											
6 – Yahoo Inc. stock			X																	X											
7 – Blackrock Provident Instl Fds Calif Money Fund			X										X							X											
8 – Corona-Norco Calif Uni Sch Dist Bond				X														X					X								
9 – Gateway Refing Auth CA Rev RFDG-SER Bond			X															X				X									

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																	
																Type				Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings (cont'd):																																
2 -- Hersperia Calif Uni Sch Dist Spl Bond			X															X				X										
3 -- Orange Calif Redev Agy Bond				X														X					X									
4 -- Rancho Cucamonga Calif Cmnty Bond				X														X					X									
5 -- Romoland Sch Dist Calif Spl Tax Cmnty Bond				X														X					X									
6 -- Sacramento Calif Spl Tax North Natomas Bond			X															X				X										
7 -- Santa Margarita Calif Wtr Dist Bond			X															X				X										
8 -- Wm S Hart Calif Un High Sch Dist Spl Bond			X															X				X										
9 -- Residential Property, Beverly Hills, CA									X											X												

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)												Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
													Type				Amount										
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,000 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings (cont'd):																															
2 – Six Flags Fund, Ltd (L.P.), (see Exh. A, #1)									X							X											X				
3 – Six Flags Claims Trust (see Exh. A, #2)			X														X										X				
4 – H & S Beach, LP (see Exh. A, #3)			X															X								X					
5 – H & S Long Beach, LP (see Exh. A, #4)		X																X								X					
6 – H & S New Mountain II, LP (see Exh. A, #8)			X																X												
7 – H & S Market, LP (see Exh. A, #12)			X																X												
8 – H & S Rexford, LP (see Exh. A, #5)			X																X												
9 – H & S Rexford IV, LP (see Exh. A, #6)			X																X												

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																	
																Type				Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Nathan Hochman 1987 Trust holdings (cont'd):																																
2 – H & S St. Louis, LP (see Exh. A, #9)			X																	X												
3																																
4																																
5																																
6																																
7																																
8																																
9																																

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																
																Type				Amount												
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Jennad, LLC holdings (LLC formed to invest in marketable securities):																															
2 – Russell 2000 Growth Index Fund		X											X							X											
3 – Russell 2000 Index Fund		X											X							X											
4 – Russell 1000 Value Index Fund		X											X							X											
5 – MSCI EAFE Index Fund		X											X							X											
6 – Russell 1000 Index Fund		X											X							X											
7 – 1-3 Year Treasury Index Fund		X											X							X											
8 – Lehman Aggregate Bond Fund		X											X							X											
9 – iShares Lehman Tips Bond Fund		X											X							X											

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																	
																Type				Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Jennad, LLC holdings (cont'd):																																
2 -- DJ Wilshire REIT ETF		X											X							X											
3 -- Reserve Fund Primary Fund		X											X							X											
4																																
5																																
6																																
7																																
8																																
9																																

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																	
																Type			Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Hochman Children Present Interest Trust holdings:																																
2 -- Union Bank of CA accounts			X															X		X												
3 -- Vanguard CA IT Tax Exempt Fund						X							X					X							X							
4 -- Vanguard CA LT Tax Exempt Fund					X								X					X						X								
5 -- Six Flags Fund, Ltd. (LP) (see Exhibit A, #1)						X											X										X					
6 -- Six Flags Claims Trust (see Exhibit A, #2)					X													X								X						
7 -- El Dorado Estates LLC (mobile home park in Las Vegas, NV)						X											X								X							
8 -- University Plaza (shopping center in Little Rock, Arkansas)			X																	X												
9 -- Harbor City Estates (mobile home park in San Dimas, CA)			X														X					X										

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Assets and Income	Valuation of Assets at close of reporting period													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																	
BLOCK A	BLOCK B													BLOCK C																	
														Type				Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Hochman Children Present Interest Trust holdings (cont'd)																															
2 – Gateway Refing Auth CA Rev Bond		X																X			X										
3																															
4 SFG, Inc (non-managing general partner of Six Flags Fund Ltd. LP) holdings:																															
5 – Union Bank of CA account		X																		X											
6 – Six Flags Fund, Ltd LP (see Exh. A, #1)			X														X							X							
7 – Six Flags Claims Trust (see Exh. A, #2)		X																X					X								
8																															
9																															

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															Type				Amount											
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 SFG-1, LLC (managing member of Six Flags Over Georgia, LLC)																															
2 -- Six Flags Over Georgia, LLC (see Exh. A, #1)				X												X							X							
3																															
4 Hochman Salkin Profit Sharing Plan 1 holdings:																															
5 -- Union Bank of CA accounts			X															X			X										
6 -- Baron Assets Fund			X										X							X											
7 -- Dodge & Cox Stock Fund			X										X							X											
8 -- Fidelity Contra Fund		X											X							X											
9 -- Fidelity Magellan Fund			X										X							X											

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Assets and Income	Valuation of Assets at close of reporting period														Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																
BLOCK A	BLOCK B														BLOCK C																
															Type				Amount												
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Hochman Salkin Profit Sharing Plan 1 holdings (cont'd):																															
2 -- Northeast Investors Trust			X										X							X										
3 -- Tweedy Brown Global Value Fund			X										X							X										
4 -- Vanguard High Yield Corp Fund			X										X							X										
5 -- Vanguard 500 Index Fund		X											X							X										
6 -- Vanguard Stock Market Index Fund			X										X							X										
7 -- AES Corp Stock		X																		X										
8 -- Westar Energy, Inc. Stock		X																		X										
9 -- AT&T, Inc. Stock		X																		X										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)														Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
															Type				Amount										
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Hochman Salkin Profit Sharing Plan 1 holdings (cont'd):																															
2 -- BellSouth Stock		X																	X												
3 -- Verizon Communications Stock		X																	X												
4 -- OGE Energy Corp Stock		X																	X												
5 -- Int'l Bank Recon and Devel Bond		X																	X												
6 -- H & S New Mountain, LP (See Exh. A, #7)		X																	X												
7 -- H & S New Mountain II, LP (See Exh. A, #8)		X																	X												
8 -- Harbor City Estates, LP (mobile home park in San Dimas, CA)		X														X						X									
9																															

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)														Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																
															Type				Amount											
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Hochman Salkin Profit Sharing Plan 2 holdings:																															
2 -- Baron Small Cap Fund			X										X							X										
3 -- T Rowe Price Science and Technology Fund			X										X							X										
4 -- Tweedy Browne Global Value Fund			X										X							X										
5																															
6 Hochman Salkin Cash Balance Pension Plan				X																X										
7																															
8 Virtual Anchor TV, LLC Stock (technology company, Beverly Hills, CA)			X																	X										
9																															

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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| Assets and Income (BLOCK A) | Valuation of Assets at close of reporting period (BLOCK B) | | | | | | | | | | | | | | | Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C) | | | | | | | | | | | | | | |

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Do not compl te Schedule B if y u are a new entrant, n minee, r Vice Presidential r Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
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Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)												
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x										
1																		
2																		
3																		
4																		
5																		

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
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Do not c mplete Schedul B if you are a n w entrant, nominee, r Vice Presidential r Presidential Candidate

Reporting Individual's Name	SCHEDULE B continued (Use only if needed)	Page Number
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Part I: Transactions

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)													
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
1																			
2																			
3																			
4																			
5																			
6																			
7																			
8																			
9																			
10																			
11																			
12																			
13																			
14																			
15																			
16																			

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

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Reporting Individual's Name	SCHEDULE C	Page Number
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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand											
1	Wells Fargo Bank, Los Angeles, CA 90071	Credit Line (paid off)	2007	variable	monthly				X							
2	Bank of America, Los Angeles, CA 90071	Credit Line (paid off)	2007	variable	monthly			X								
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	I am a non-managing participant in Hochman, Salkin's Profit Sharing Plan #1	Hochman, Salkin, Rettig, Toscher & Perez, Beverly Hills, CA	01/98
2	I am a non-managing, participant in Hochman, Salkin's Profit Sharing Plan #2	Hochman, Salkin, Rettig, Toscher & Perez, Beverly Hills, CA	1/02
3	I am a non-managing participant in Hochman, Salkin's Cash Balance Pension Plan	Hochman, Salkin, Rettig, Toscher & Perez, Beverly Hills, CA	1/06
4	Upon resignation, neither I nor Hochman, Salkin will make further contributions to the profit sharing or pension plan	Hochman, Salkin, Rettig, Toscher & Perez, Beverly Hills, CA	
5	on my behalf, except for benefits that accrue prior to my resignation.		
6			

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Hochman, Salkin, Rettig, Toscher & Perez, P.C., Beverly Hills, CA	Law firm	Employee	02/1997	Present
2	Cedar Sinai Medical Center, Los Angeles, CA	Non-profit institution	Board of Governors	01/2002	Present
3	Jewish Community Foundation, Los Angeles, CA	Non-profit institution	Board of Directors	01/2002	Present
4	American Jewish University, Los Angeles, CA	Non-profit institution	Executive Board	05/2007	Present
5	Jewish Federation of Greater Los Angeles, Los Angeles, CA	Non-profit institution	Board of Directors	01/2001	Present
6	Brandeis-Bardin Institute, Brandeis, CA	Non-profit institution	Board of Directors	01/1999	5/2007

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Hochman, Salkin, Rettig, Toscher & Perez, P.C., Beverly Hills, CA	Legal services that I provided to the firm and its clients
2	Paul Lessler (client of Hochman, Salkin), Newport Beach, CA	Legal services
3	Darren Stern (client of Hochman, Salkin), Los Angeles, CA	Legal services
4	Emilita Cananea (client of Hochman, Salkin), San Dimas, CA	Legal services
5	Farid Shalabi (client of Hochman, Salkin), Arcadia, CA	Legal services
6	Allan Perry, Sr., Allan Perry, Jr. (clients of Hochman, Salkin), Montrose, CA	Legal services

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Stanford Law School, Stanford, CA	Non-profit Law School	Board of Visitors	04/2006	Present
2	Legal Services Division, United Jewish Fund, Los Angeles, CA	Non-profit Institution	Co-Chair	01/1990	Present
3	SFG, Inc., Beverly Hills, CA (providing advisory services to Six Flags Fund)	Corporation	Board of Directors	01/1995	Present
4	Hochman Family Trust Share A, Beverly Hills, CA	Family Trust	Trustee	08/2001	Present
5	Hochman Family Trust Share B, Beverly Hills, CA	Family Trust	Trustee	01/2001	Present
6	Hochman Family Trust Share C, Beverly Hills, CA	Family Trust	Trustee	01/2001	Present

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Rito Diaz (client of Hochman, Salkin), Commerce, CA	Legal services
2	David Lund (client of Hochman, Salkin), Newport Beach, CA	Legal services
3	Theodore Dution (client of Hochman, Salkin), Rancho Cucamonga, CA	Legal services
4	De Elroy Beeler (client of Hochman, Salkin), Los Angeles, CA	Legal services
5	Edward Espinoza (client of Hochman, Salkin), Summit, New Jersey	Legal services
6	Ravi Yadav (client of Hochman, Salkin), New York, NY	Legal services

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Hochman Children Present Interest Trust, Beverly Hills, CA	Family Trust	Trustee	08/2001	Present
2	Nathan Hochman 1987 Trust, Beverly Hills, CA	Family Trust	Trustee	08/2001	Present
3	David Hochman 1987 Trust, Beverly Hills, CA	Family Trust	Trustee	08/2001	Present
4	Nancy Hochman 1987 Trust, Beverly Hills, CA	Family Trust	Trustee	08/2001	Present
5	Jennifer Hochman 1987 Trust, Beverly Hills, CA	Family Trust	Trustee	08/2001	Present
6	H & S Investments, LLC, Beverly Hills, CA	Corporation making investments	Co-Manager	08/2001	Present

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Fred Sands (client of Hochman, Salkin), Los Angeles, CA	Legal services
2	George Molsbarger (client of Hochman, Salkin), Santa Monica, CA	Legal services
3	Donald Cooksey (client of Hochman, Salkin), Rancho Santa Fe, CA	Legal services
4	Sean Tayebi (client of Hochman, Salkin), La Jolla, CA	Legal services
5	Donna Hansen (client of Hochman, Salkin), Long Beach, CA	Legal services
6	Stephen Schlag (client of Hochman, Salkin), Kula, HI	Legal services

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Hochman Family 2003 Trust, Beverly Hills, CA	Family Trust	Trustee	11/2003	Present
2	SFG-1, LLC, Beverly Hills, CA (managing member for Six Flags Over Georgia)	Corporation	Board of Directors	01/1997	Present
3	American Jewish Committee, Los Angeles, CA	Non-profit institution	Board of Directors	04/2007	Present
4	James Grace Revocable Trust, Beverly Hills, CA	Family Trust (client of Hochman, Salkin)	Trustee	11/2005	Present
5	American Bar Association White Collar Crime Committee, Los Angeles, CA	Bar Association	Chair, Tax Crimes	01/1990	Present
6	Virtual Anchor TV, LLC	Technology company	Co-President	01/2005	Present

Part II: Compensation in Excess of $5,000 Paid by One Source

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None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Glen Kawesch (client of Hochman, Salkin), Rancho Santa Fe, CA	Legal services
2	Scott Welker (client of Hochman, Salkin), Palm Springs, CA	Legal services
3	Dominique Appleby (client of Hochman, Salkin), Beverly Hills, CA	Legal services
4	Scot Drew (client of Hochman, Salkin), Fishers, Indiana	Legal services
5	Joseph Fryzer (client of Hochman, Salkin), Los Angeles, CA	Legal services
6	Lucrezia Bickerton (client of Hochman, Salkin), Redondo Beach, CA	Legal services

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Part I: Positions Held Outside U.S. Government

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None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Titan Organization, LLC, Los Angeles, CA	Real Estate Development Company	Secretary	05/2006	Present
2	Synergized Properties, LLC, Beverly Hills, CA	Property Management Company	Co-Manager	08/2001	Present
3	Rodmark, LLC, Los Angeles, CA	Real Estate Development Company	Officer	05/2005	07/2006
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None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Alexander Levkoff (client of Hochman, Salkin), San Dimas, CA	Legal services
2	Brian Andreas (client of Hochman, Salkin), Santa Barbara, CA	Legal services
3	Jeffrey Walsworth (client of Hochman, Salkin) , Montecito, CA	Legal services
4	Robin Gonzales (client of Hochman, Salkin), Chandler, AZ	Legal services
5	Derek Schober (client of Hochman, Salkin), Lake Havasu City, AZ	Legal services
6	David Moriarty (client of Hochman, Salkin), Los Angeles, CA	Legal services

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	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Yatin Mody (client of Hochman, Salkin), Westlake, CA	Legal services
2	Kevin King (client of Hochman, Salkin), Sunland, CA	Legal services
3	Mori Amini (client of Hochman, Salkin), Los Angeles, CA	Legal services
4	Martin Wuerth (client of Hochman, Salkin), Torrance, CA	Legal services
5	Brian Elliot (client of Hochman, Salkin), N. Hollywood, CA	Legal services
6	Bruce Lin (client of Hochman, Salkin), Claremont, CA	Legal services

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	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Jon Dunham (client of Hochman, Salkin), Loma Linda, CA	Legal service
2	David Shimmon (client of Hochman, Salkin), San Francisco, CA	Legal services
3	Dixon Doll (client of Hochman, Salkin), San Francisco, CA	Legal services
4	Paul Kriger (client of Hochman, Salkin), Westlake, CA	Legal services
5	John Hartigan (client of Hochman, Salkin), Canyon Country, CA	Legal services
6	Gideon Kotzer (client of Hochman, Salkin), Los Angeles, CA	Legal services

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	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Frank Chan (client of Hochman, Salkin), San Gabriel, CA	Legal services
2	Michael Liu (client of Hochman, Salkin), City of Industry, CA	Legal services
3	Terrance Hanks (client of Hochman, Salkin), Valencia, CA	Legal services
4	Ken Green (client of Hochman, Salkin), Los Angeles, CA	Legal services
5	Daniel Rung (client of Hochman, Salkin), Palm Desert, CA	Legal services
6	Salvatore Favata (client of Hochman, Salkin), Yorba Linda, CA	Legal services

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None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Jack Chen (client of Hochman, Salkin), Walnut, CA	Legal services
2	Monir Awada (client of Hochman, Salkin), Huntington Park, CA	Legal services
3	Geoffrey Infeld (client of Hochman, Salkin), Thousand Oaks, CA	Legal services
4	Billy Ridge (client of Hochman, Salkin), Agoura Hills, CA	Legal services
5	Memveluz Lampert (client of Hochman, Salkin), Los Angeles, CA	Legal services
6	Carl Goldfischer (client of Hochman, Salkin), Jackson, WY	Legal services

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	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
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None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	William Bradley (client of Hochman, Salkin), Ramona, CA	Legal services
2	Michael Torres (client of Hochman, Salkin), Los Angeles, CA	Legal services
3	Karen Barrett (client of Hochman, Salkin), Pasadena CA	Legal services
4	Mark Abrams (client of Hochman, Salkin), Bel Air, CA	Legal services
5	Helen Bahk (client of Hochman, Salkin), Beverly Hills, CA	Legal services
6	Eli Rich (client of Hochman, Salkin), Beverly Hills, CA	Legal services

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EXHIBIT A TO FORM SF 278 FOR NATHAN J. HOCHMAN

1. SIX FLAGS FUND, LTD. (LP)

Six Flags Fund, Ltd. (LP) (the "Fund") owns the majority membership interest in Six Flags Over Georgia, LLC ("Flags LLC"). Flags LLC is a limited partner in Six Flags Over Georgia, II, LP ("Flags II"). The principal business of Flags II is the ownership, operation, and management of the Six Flags Over Georgia Amusement Park.

2. SIX FLAGS CLAIMS TRUST

The Six Flags Claims Trust was established by the Fund, Flags LLC, SFG-1, LLC (manager of Flags) and a trustee for the purpose of funding the litigation of claims made against third parties and distributing the net proceeds of the claims to the trust beneficiaries. That litigation occurred in the State of Georgia against Time Warner Entertainment Company, L.P., Six Flags Entertainment Corporation, Six Flags Theme Parks, Inc., and Six Flags Over Georgia, Inc. between 1997-2003. The bulk of the proceeds from that litigation has been distributed from 2003-2007.

3. H & S BEACH, LP

H & S Beach, LP retains funds pertaining to the completed sale of commercial real estate in Huntington Beach, CA.

4. H & S LONG BEACH, LP

H & S Long Beach, LP retains funds pertaining to the completed sale of commercial real estate in Long Beach, CA.

5. H & S REXFORD, LP

H & S Rexford, LP has invested in Rexford Industrial Fund III, which has invested in industrial real estate properties in California for the purpose

of improving, leasing, and selling them.

6. H & S REXFORD IV, LP

H & S Rexford IV, LP has invested in Rexford Industrial Fund IV, which has invested in industrial real estate properties in California for the purpose of improving, leasing, and selling them.

7. H & S NEW MOUNTAIN, LP

H & S New Mountain, LP has invested in New Mountain Partners, LP, to make equity related investments. The aggregate value of these investments is reported in Schedule A. These investments are:

- Overland Solutions, Inc., a service provider to the insurance industry, headquartered in Overland Parks, Kansas;
- Apptis, Inc., a federal information service provider, headquartered in Chantilly, Virginia;
- National Medical Health Card, Inc., a pharmaceutical benefit management company, headquartered in Port Washington, New York.

The valuations of the interests of the Hochman Salkin Profit Sharing Plan 1 for each of these investments at the close of the reporting period is between $1,000 and $15,000 each. A capital gain has been realized in total for all the investments during the reporting period in the amount of $201 to $1,000.

8. H & S NEW MOUNTAIN II, LP

H & S New Mountain II, LP has invested in New Mountain Partners II, LP, to make equity-related investments. The aggregate value of these investments is reported in Schedule A. These investments are:

- Deltek Systems, Inc., an Enterprise Resource Planning software

solutions provider, headquartered in Herndon, Virginia;
- Mail South, Inc., a provider of shared mail services, headquartered in Birmingham, Alabama;
- Connextions, Inc., a health care services provider, headquartered in Orlando, Florida;
- Validus Holdings, Ltd, a reinsurance company, headquartered in Bermuda;
- Paris Re Holdings Ltd, a reinsurance company, headquartered in Paris, France.

The valuations of the interests of the Nathan Hochman Trust and the Hochman Salkin Profit Sharing Plan 1 for each of these investments at the close of the reporting period is between $1,000 and $15,000 each. No income has been made from any of these investments during the reporting period.

9. H & S ST. LOUIS, LP

H & S St. Louis, LP has invested in a shopping center in St. Louis, Missouri.

10. NATHAN HOCHMAN 1987 TRUST

The filer is entitled to the income generated from the assets of the Nathan Hochman 1987 Trust but has no interest in the corpus of the trust. The full value of each asset is reported on Schedule A.

11. GORES FF PARTNERS, LP

Gores FF Partners, LP has invested in various equity related investments. The aggregate value for all these investments has been reported on Schedule A. These investments are:

- Proxicom Holdings, Inc. which owns stock in Proxicom, Inc., an

interactive marketing company, headquartered in Reston, Virginia;

- Real Holdings, LLC, which owns stock in Real Software, NV, a technology solutions provider, headquartered in Belgium;
- Wire One Holdings, Inc., which owns stock in Wire One Communications, Inc., a videoconferencing solutions provider, headquartered in Westminster, Colorado;
- GTEL Holdings, Inc., which owns stock in Global Tel*Link Corporation, a provider of call processing and digital recording platforms to the corrections industry, headquartered in Mobile, Alabama;
- Somero Holdings, Inc., which owns stock in Somero Enterprises, Inc., a designer, manufacturer and seller of concrete leveling and placement equipment, headquartered in Jaffrey, New Hampshire;
- Avure Holdings, LLC, which owns stock in Avure Technologies, Inc., Avure Technologies AB, and Avure Autoclave Systems, Inc., industrial press manufacturing companies, headquartered in Kent, Washington;
- SER Holdings, Inc., which owns stock in SER Solutions, Inc., a provider of contact center management solutions for business activities, headquartered in Dulles, Virginia;
- Gores ENT Holdings, Inc., which owns stock in Enterasys Networks, Inc., a provider of secure network infrastructure, headquartered in Andover, Massachusetts;
- Gores FC Holdings, Inc., which owns stock and warrants in First Communications, Inc., a communications solutions provider, headquartered in Akron, Ohio;
- Inmac Holdings, LLC, which owns a bond that converts to stock of WStore Europe SA, an online retailer of information technology products, headquartered in France;
- Brand Rex Holdings, LLC, which owns stock in Brand Rex Ltd, a designer and manufacturer of fiber and copper based cabling systems, headquartered in Scotland.

The valuations of the interests of the filer for each of these investments at the close of the reporting period is between $1,000 and $15,000 each, with the exception of Inmac Holdings, LLC and Brand Rex Holdings, LLC, for which the filer's interest is less than $1,000 each. There has been no income received from any of these investments during the reporting period.

12. H & S Market, LP

H & S Market, LP has invested in an office/retail building in San Francisco, California, for the purpose of development, leasing, and sale.

Senator CARDIN. Once again, thank you all for being here today, but particularly I thank you all for being willing to serve in public office. It's not easy and we appreciate your willingness to put yourselves forward.

The confirmation process requires the Senate to confirm your nominations. This committee is charged with establishing the record so that the Senators can make that judgment on confirmation.

The questions I am going to be asking are questions that deal with the subject matter, in most cases, of the areas in which you are being considered for, and we appreciate your candor in answering these questions, and they will be made available, obviously, to all the members of our committee that will make the recommendations to the full Senate.

There is also the possibility of Senators who are not here today to propound written questions, or for the committee to do that. That determination is made at the end of this hearing process as to whether there will be follow-up questions that you will be asked to respond to.

So let me start with Mr. Harris, and if I might, ask some questions concerning the Community Relations Services that are provided under the Department of Justice. I am going to be talking about Jena 6 for a moment. As you know, it's been of great interest to this committee and the members of the U.S. Senate.

One of the major areas of interest by your agency, according to tradition and also according to your Web site, is to look at major school disruptions and circumstances where your services could be very helpful. When one reviews what happened in Jena, Louisiana with nooses hanging from a tree known as the "white tree", an organized sit-in by the black students in protest, and then mounting tension between African American and white students, it would seem to me that this was an ideal circumstance for your agency to try to provide its services. Yet, it took almost a year before anyone was on the ground in Jena from your Department. So I'm going to give you a chance to respond as to how Jena 6 was handled and whether there are any lessons to be learned from Jena 6.

Mr. HARRIS. Thank you, Mr. Chairman. When the nooses were hung in the tree at the school on August 31st, CRS—this is covered by Region 6 of CRS. The Regional Director of that region learned of the nooses in September of 2006 and began assessing the racial tensions in Louisiana and the Jena area at that time, and again later in that month, the month of September.

In November of 2006, she, Carmelita Freeman, began meeting with civil rights leaders in Louisiana to address the issues or the concerns and trying to assess the situation, if there were any growing tensions in the town of Jena itself. CRS had had over 50 contacts and visits in Louisiana, the State of Louisiana, to date and over 17 visits in Jena itself, the town of Jena. The date that I believe you're talking about, the year after, in June of 2007 and actually visiting the town of Jena, the physical presence in Jena, is only a part of the picture.

Jena itself is a town of 2,971 people with one motel. At that time, Jena did not have in the town itself traditional civil rights groups or civil liberties of that type of infrastructure in the town itself that

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you would find in the city of Washington, New York, or a larger city. So, it was with great effort and great pains to try to gain entry into the town itself by the regional director, into the town. So there were many interactions with civil rights leaders and groups in Louisiana long before that June date of 2007.

Senator CARDIN. And who initiated those contacts on behalf of CRS?

Mr. HARRIS. The Regional Director, Carmelita Freeman.

Senator CARDIN. It's my understanding that there are only two individuals that cover the entire region in which Jena is located. Region 6 covers Texas, New Mexico, Louisiana, Oklahoma, and Arkansas. Is she one of those two individuals?

Mr. HARRIS. She is the Regional Director. She has two conciliators in her office. One was out on some form of disability leave. So you're correct, there were only two at the time covering the areas, the States you just named, which is a large area. Correct.

Senator CARDIN. Well, was that one of the considerations as to why it took that length of time before one of the personnel were actually on the ground to assess what was happening in Louisiana?

Mr. HARRIS. There only were two people, correct. But that is not a consideration of where CRS goes. It's—a great deal of people in the Agency travel among the different regions. If assistance is needed in one particular region, we will detail and send people to another region. So the shortage of individuals was of no effect in terms of how Jena was handled.

Senator CARDIN. So the decision as to when to intervene was made by the Regional Director? Is that what I understand? Did anyone in your operations in Washington feel that there was need for greater attention to what was happening down there prior to sending someone there in June?

Mr. HARRIS. Well, the regional directors keep headquarters here in Washington apprised of the situations in their regions. The assessment process—it's not a science, it's an art. Part of the assessment process done by the regional director in this case is to attempt to ascertain, what are the tension levels in situations like this. She met with, as I said, civil rights leaders, clergymen, law enforcement, and people in and around Jena, attempting to ascertain the tension levels at that time.

Senator CARDIN. But did not feel that it was necessary for someone to actually be there to try to deal with the student body until a year later?

Mr. HARRIS. Well, at the time when CRS learned about the issue back in September of 2006, there were efforts—the nooses were hung on the 31st of August. As I said, the Regional Director learned of it in September. Then she began to assess the situation and make efforts to ascertain what the tension level was in Jena itself and try to locate individuals or groups to whom she could talk and try to discover about the tensions, the racial tensions in the community itself. It's a process that develops over time. CRS has a certain protocol and procedures of how it handles these cases, a historical process and protocol, that ensures integrity in the process.

Senator CARDIN. And I can appreciate, we want to make sure we get this done right. We want as much information as possible. I

think interviewing is absolutely an essential part of proper intervention. But it seems to me that a delay from August to June, when you're dealing with the circumstances on a campus, is unacceptable as far as trying to get intervention, if intervention, in fact, is needed. I take it you came to the conclusion that intervention was appropriate, but it took a rather long time to reach that point.

Were you satisfied by how things went as far as your intervention into Jena? Are there any lessons to be learned from how this was handled by your Agency?

Mr. HARRIS. Mr. Chairman, I think, if I understand what you're saying, there are two questions. One, is covering initially the length of time to get involved in Jena, and second, about our services and the effectiveness of those services.

As to the length of time, I want to state that to gain entrance into a community such as Jena, a small town—you know, a small southern town by a Federal agency that may be suspicious of any Federal agencies, took the sheer will of the Regional Director, Ms. Freeman, who is actually from Louisiana and as a college student actually was one of the students that helped desegregate the library at LSU University.

She's from Louisiana and she worked with the town. She, even after she went to the town of Jena, made efforts to work with the school and other entities in the town. They weren't immediately receptive or warm. It is only through her effort in building a relationship with the people in the town that she was able to achieve that.

To the second part of your question as to the effectiveness of the services, I have heard some people say that if CRS had been there earlier, that the rallying wouldn't have occurred, or certain other things, or it wouldn't have come to the level—the tension wouldn't have risen to the level that it did. It is not within the mandate of CRS to prevent people from rallying.

It is not the goal of the Department of Justice or CRS to quell people's First Amendment rights to march and rally. Once people elect to rally or march, it is within CRS mandate and CRS responsibility to help assist those communities to have a peaceful rally, to help them with the technical assistance, with training marshals for the rally, to help with rumor control, to help with the dissemination of information.

So the effect of—in that light, CRS was very successful. The rally of—largest rally since the 1960s on a civil rights issue like this, in a town that's not equipped to deal with 400 buses and 20,000-plus people, not a single arrest occurred that day of the rally. So, obviously CRS was successful, yes, sir.

Senator CARDIN. Well, I guess one of my concerns is that it seems like, from Jena, we've seen a growing number of events in which nooses have appeared. We have a chart—I want to show it to you—that I think demonstrates the number of episodes that have been reported with the use of the noose. I don't have to explain, I think, to this group the symbolism of a noose and its racial overtones to it.

It was used as a way of punishing slaves and as part of our history well after the civil war. You will notice that those episodes include the State of Maryland. We had an episode at College Park, Maryland. I've been involved in community events to try to further

the goal of your agency to work out community understanding, to try to keep rumors from spreading and becoming reasons for actions and to get better community understanding.

My concern is that the number of hate crime episodes are way too high in this country and your Department can do something about that by getting to a community, offering your technical assistance so that a community can heal and better understand the relationships.

I, first, wonder whether you need additional resources, whether there's a need to reorganize, or whether you think things are—you have adequate ability to deal with the problems in our community that seem to be growing into many different areas.

Mr. HARRIS. Mr. Chairman, CRS uses the resources that it has efficiently and prudently, and it uses its best efforts in using those resources. Should Congress, in its wisdom, elect to give CRS additional funds, we will also use those funds efficiently and wisely.

Senator CARDIN. Thank you. I may come back for a few more questions, but let me give you a little bit of a break and go to Mr. Hagy for a moment, if I might.

Let me, Mr. Hagy, if I might, get your view on the problem of gangs and gang violence as to whether we have enough Federal statutes on this. Where do we need to go so that the Federal Government can be more effective in working with State and local government to deal with the problems of gangs in our community?

Dr. HAGY. I think I can tell you somewhat about what the National Institute of Justice is learning about gangs and how we're involved in the process. The Project Safe Neighborhoods initiative, which you all are probably familiar with, in 2001, when that went out in the field it was actually a really opportune way for NIJ to work with the rest of the Department. We actually sent out researchers out in the field to provide technical assistance to each of those PSN efforts.

Later on, I think it was last fiscal year, anti-gang money was added into the Project Safe Neighborhoods effort to actually take advantage of the Federal, State, and local partnerships which are really the basis of those relationships. So our technical assistance has been out in the field. We added the anti-gang—when the anti-gang money went out in coordination with Project Safe Neighborhoods money, we actually helped developed performance measures and continue to provide technical assistance.

What we're doing right now is saying, well, what have we learned from that effort? We have got some specific strategies that we're looking at that we've learned through that program, as well as doing case studies on some of the Project Safe Neighborhoods sites across the country and trying to learn as much as we can.

Again, it's a very opportune way to use a research organization so that we're there at the beginning with performance measures and data collection and we actually came come out with something in the end. So we've been working very closely. Those studies are being released now, the case studies. One is on anti-gang strategies, the specific strategies, the case studies on the PSN sites.

Interestingly, this next year we have just released our Crime Control and Prevention, which is a standards solicitation. It is focused on gang prevention this year. So, we're hoping to take advan-

tage of what we learned throughout PSN and Anti-Gang and actually solicit more research studies on it. I couldn't speak as to advice about the statutes.

I'm not as familiar with all of the statutes that may be involved in the anti-gang effort, but I can assure you we'll be glad to provide any information we're learning as we get it and, and as an organization, they've been good about publishing what we're learning to inform the Congress and the administration.

Senator CARDIN. I think that's very helpful. I've talked to many of the States Attorneys in Maryland on gang issues and they sort of agree with you, that it's not necessarily the lack of laws or even resources, but are we using them in the right way. I know we're frustrated here on Capitol Hill. We want to show everything we can to be aggressive, being a partner with the State and local authorities in dealing with the gang issues.

But I think having more of the information that you're referring to would be extremely helpful to us. One of the issues that I have raised is, are we doing enough to engage private organizations in helping us deal with it? I'll tell you, in my community, the faith-based groups have been very helpful in trying to deal with local law enforcement and safely removing people from gangs, which sometimes is not easy to do in a community.

So I think we have to look at all options. I agree with you that we need to get more of the community-based information. We've got to do a more effective job, but we've got to do it in the right way. So I think the way you're proceeding is the right way to go.

Let me deal with the recidivism rate, because I find that we don't always do what I think is in our best interests as it relates to people who are sent to prison. Ninety-five percent are going to come back out in our community. Recidivism rates are extremely high. We need to look at strategies that are in our interests to deal with people who are coming out of our prison system.

We had the Second Chance Act in Congress, which has a lot of interest. I'm just interested as to your views as to what we should be looking at to try to deal with people who are incarcerated, knowing full well that it's in their interests and our interests to be more effective in rehabilitation.

Dr. HAGY. That's another great example—and there's not always a lot of them—of how research has been used in the field. I know when I came from Homeland Security over to the Department of Justice, prisoner reentry at that point has received such bipartisan support, is an issue of moving forward and helping. We know that 95 percent are going back to the community; 67 percent, roughly, will recidivate.

The first big effort, the Serious and Violent Offender Reentry Initiative, was another case of where they committed, Congress and the administration, roughly $12 million for a 5-year study, again, to set up performance measures, to set up data collection as you move forward at the beginning of the effort so we actually come out with something at the end, and that study is being done now, with final results, probably next year.

But on the SVORI Web site, they are releasing results, whether they're descriptive, or different faith-based groups. They're actually releasing studies as they go along on what we're learning from that

particular initiative that focuses on serious and violent offenders. The other faith-based initiative, focusing on non-violent offenders, is another effort working with faith-based groups.

We have done some research in the area, somewhat focused on the SVORI effort. It is our biggest effort that is being done by the Urban Institute, seeing how that comes out and what we learn from there.

I think probably because prisoner reentry is really focusing efforts around people leaving the prison system, there's also research in many other agencies, ONDCP, or drug research, or employment research, or health research that really we have to look at, because really what prisoner reentry is, is focusing all of those resources around the outgoing, and it's really the effectiveness of the drug program.

So, beyond the SVORI study, which we've put a lot of effort in and hopefully, again, as they're releasing those results and then we'll see the finals, we'll learn a lot from there to inform that, like we want to do with all OJP programming, inform that next level of funding. Like, next time it goes out, it should be more efficient and more effective.

So it's been a pretty good example for us anecdotally. We do think, like you had mentioned in the gang issues, that faith-based groups do pretty well because of their knowledge of the community. They actually know the community that the prisoners are reentering. They know the facilities that are available and the resources that are available. So, we're hoping to learn more and more about that, but again, our biggest effort is that study by the Urban Institute.

Senator CARDIN. On this area, I think you can be particularly helpful by suggesting where we in Congress can be more effective in helping you in your mission. These aren't always the most popular programs in a community, but they're important programs and the ones in which I think there is a growing interest in Congress to be in support of.

Sometimes we pass laws that are intended for one purpose, such as some of our election laws that are passed locally, to have a punitive impact and can have a negative impact on someone reentering society. We don't always think about the consequences of all the actions when we do the first action.

I hope that you will feel comfortable in making candid recommendations as to how we can improve on our success with people who have been incarcerated, preventing recidivism, looking beyond, perhaps, the normal budget issues and some of the other issues in society that play a role here.

Dr. HAGY. Yes, sir.

Senator CARDIN. Thank you.

Mr. Burns, let me, if I might, talk a little bit about the prescription drug issue, the on-line pharmacy issues that you mentioned and I mentioned. One of our problems is that there was a study in 2003 that revealed that 15.1 million adults admitted to abuse of prescription drugs, so we know that prescription drugs is part of our problem.

What the Judiciary Committee is attempting to do is get a handle on part of that problem, which are the on-line pharmacies. I

wanted to get your opinion as to how we should be proceeding, as to what are valid prescriptions for the issuance of drugs, knowing full well that we're in a different technology as far as all professions, including the medical profession. What should we be looking to do?

Mr. BURNS. Well, the good news, Mr. Chairman, as you know, with the release of the Monitoring the Future survey last week, is we've enjoyed great success over the last 6 years in nearly every category, especially 12- to 17-year-olds. Drug use is down and it is down dramatically: marijuana, cocaine, methamphetamine, heroin, inhalants, tobacco, alcohol. Young people are getting the message.

But what we also learned is the one glaring problem: prescription drug abuse. The 12- to 17-year-olds specifically talk about Oxycontin and Vicodin. We saw this coming a couple of years ago and have tried to do a couple of things. One, get prescription drug monitoring programs in each and every State. We started out, I think there were about 22 or 23. We're up to 35. We have a ways to go.

The second thing that we have tried to do is just what you said. John Walters, the drug czar, sat down a couple of years ago and said, "We need to find out, what is this problem? What is the scope? Are they knocking over drugstores? Are they getting them on-line? Is it doctor shopping? What is the means and manner that these pills are being used illicitly?" So we've been trying to figure that out.

Today, I tell you, we believe that about 60 percent of all prescription drugs that are obtained come from the medicine cabinet at home. It's grammatically incorrect, but drug dealers are us. So we are now in a position to try, through prevention and education programs, to deal with that issue.

The last thing I'd like to say on the on-line pharmacy, is thank you. Thank you for your efforts with respect to that bill, requiring a face-to-face encounter between a physician and a patient just once. What we have tried to say for 2 years now is so important, so your work, Senator Sessions', Senator Feinstein's is much appreciated by the White House and our office.

Senator CARDIN. Well, we thank you for that because we do think, when you're dealing with on-line consultations, that they are not real. People are getting prescription medicines without really getting a physician signing off on the need for it.

We are also concerned about what is happening with sources outside the United States. On the Internet, of course, it's so easy to get prescription drugs filled and many times they're coming in from sources outside the United States. We also question whether that may be leading to some of the abuse of the use of prescription drugs.

Let me go on to the e-prescription. There seems to be a divergence here between what the trend appears to be. That is, if you look at the Medicare Modernization Act, you look at the modern thought about e-prescriptions, it is seen to be safer, with less chance of missing—being able to read the physician's handwriting. There's more ability to coordinate with other medicines that individuals are taking. It seems to me a safer way for issuing prescriptions.

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However, on controlled substances, which I believe represents about 15 percent of the market, it appears to be moving in the opposite direction. I want to get your view as to whether there should be different standards for controlled substances on the use of e-prescription, which seems to run counter to what was the administration's policy in the Medicare Modernization Act.

Mr. BURNS. I have followed that closely the last couple of months, including the hearing that took place. The hesitancy to comment is the fact that it is currently under the regulatory process with DEA and I'm not in a position—in fact, am precluded from taking action or exerting any pressure on that decision-making process. But I would concur with your statements as related to, this is an issue that we as a country have to come to grips with because of, one, the enormity of the problem, but two, to facilitate what 98 percent of all prescription drugs are prescribed in a safe and appropriate manner by physicians to patients. But it's something we need to address in the months and the years to come.

Senator CARDIN. So you're acknowledging it's an issue, but you don't want to comment now because of the regulatory process. Am I reading that—

Mr. BURNS. Yes. From what I understand, DEA's position is, they want a piece of paper. They are not in a position yet to go to pure e-prescribing. Now, you can support that, you can argue with that, but as I understand their position, that's where they're at. I'm not in the position, as Deputy Director of State and Local Affairs, or the Deputy to the drug czar at this point to exert pressure on them while they're in that process.

Senator CARDIN. Well, I might say, there might be some middle ground here. There might be ways in which most prescriptions can be filled by e-prescription. If there's a need for a paper trail, the paper trail, a written trail other than through e-mail, there might be other ways of handling that. I just would urge you to be a little more aggressive in trying to look at the concerns on safety.

There's one thing as to the appropriateness of a prescription, but there's also the safety of interpreting it property, the right dosages, and consistency with other medicines, which appears like, from the evidence that we've seen, that e-prescription is a much safer route than the old-fashioned physician-written ones that you can't read, prescriptions being interpreted by different parties.

Mr. BURNS. I look forward to working with you on it.

Senator CARDIN. Do you want to offer a view on the crack cocaine controversy?

Mr. BURNS. I think we all agree that there are disparity issues. The administration is looking at a number of positions that are being put forward, and hopefully will come to a consensus. I don't think we're all ever going to agree on this issue, but I think we're getting closer to resolving it.

Senator CARDIN. Well, we do have bipartisan interest in this committee and in the Senate, and I think also in the House, to get this issue resolved. It seems to me we've been talking about it for a long time. This is not something that just came up in the last year. I would urge us to give a higher priority to it because it's important to the perception as to whether our justice system is equal,

that we're not discriminating against certain groups in the manner in which punishment is used.

I think it would go a long way to confidence in the community if there was a credible action taken. The disparity is there. There is no question about the disparity. But taking it away that does not compromise law enforcement, but recognizes the disparity that exists because of cultural or ethnic issues.

Mr. BURNS. Agreed. Thank you.

Senator CARDIN. Again, I may come back.

You've been waiting very patiently. I thank you very much for that. I must tell you, I have received communications from many groups, very complimentary of your leadership on behalf of these issues. We did talk to several groups who said very nice things about your leadership.

Do you support the issuance of mutual protective orders?

Ms. DYER. No, I do not. I do not support the issuance of mutual protective orders. In Texas, we made sure that we had a law that each person who received a protective order had to individually qualify and individually have their own application.

Senator CARDIN. Good.

I want to ask you about a subject that is totally without any controversy whatsoever, and that is our immigration policy in America.

[Laughter.]

You know, there's a lot of ways that you could look at the immigration issues, but clearly people who are here undocumented are vulnerable to the issues that come under your agenda.

So what is your solution for us dealing with the immigration issue as it relates to protecting the vulnerable population?

Ms. DYER. Well, I think that we need to make sure that people who are in this country, regardless of why or how they're here, have access to protection. Specifically, I can point to, as my years—for 14 years I was a specialized domestic violence prosecutor and I was the chief of my division. I'll give you a very specific example of my opinion.

When a victim of domestic violence or sexual assault came in to my division to get a protective order, we did not ask their legal status. They did not have to—they needed to have some form of ID so that they could sign and swear to the affidavit, but we absolutely did not base our provision of services on their legal status. I think that every person who is here needs to be protected and we need to make sure that the real bad guy is the one that suffers and not the victim.

Senator CARDIN. We might need you on our committee. We're talking about immigration. It's not a terribly controversial issue.

[Laughter.]

But I thank you. We're struggling with how to deal with these issues and what services should be allowed and which ones should not. But I think we all agree on safety issues.

There are victims. To the extent that we can help victims, I think we have a responsibility not only to people in our country, but there's an international responsibility that we also have that deals with trafficking and those issues. In some cases, this runs pretty close to those lines as to whether we have a circumstance in which

people are being abused internationally. We have shown leadership in that area. I think you could be helpful to us in the U.S. role domestically and internationally in this area.

Mr. Hochman, let me, if I might. You are seeking a position in which people who are interested in the tax laws will have interest in, but it is one in which is a pretty technical position in carrying out tax policy and enforcement, but extremely important to this country. To me, it is very important to coordinate the role within the Department of Justice and the Department of the Treasury and the Internal Revenue Service.

So what strategies do you have that have impact on the Department of the Treasury? I must tell you, as I've told you privately, it's one of the most difficult agencies I find to break through the bureaucracy of. So how are you going to be able to penetrate and get consistent tax policy in our country?

Mr. HOCHMAN. Well, the Tax Division has had a long tradition of working with its partners, both at the Assistant Secretary for the Treasury and the IRS. In fact, the Chief Counsel of the IRS, Donald Korb, is here today in the back of this room.

Senator CARDIN. He's not part of the bureaucracy I was referring to.

[Laughter.]

Mr. HOCHMAN. Nor did I think it was. The goals are the same. I mean, the IRS states its mission as: service plus enforcement equals compliance. The Tax Division obviously focuses on the enforcement part of that equation. But to achieve the overall compliance, which is the goal, we have to work with the IRS and the Treasury Department.

To the extent that the Tax Division can assist with policy, it is to comment on the enforcement aspects of that policy as it is being made. So we do have a role with tax policy, however, our primary role is to be the Nation's tax litigators throughout this country.

Senator CARDIN. Of course, one of your principal roles is tax evasion dealing with enforcement of our laws, but it seems to me that most important thing that can be done is to make sure our laws are clear so that those who are out in the field know clearly what the responsibilities are when they cross that line and you need to be aggressive in your enforcement. But it requires a close coordination between Department of Justice and the IRS and the Department of Treasury.

Senator CARDIN. Do you have any other recommendations as to how we should coordinate between the two agencies?

Mr. HOCHMAN. Well, again, I'm currently a private practitioner in California. I'm not part of the Department of Justice. But certainly, if I am so fortunate to be confirmed, once I would join the Department, we would work directly with Mr. Korb as Chief Counsel of the IRS, the Commissioner of the Internal Revenue Service, and the Assistant Secretary of the Treasury to come up with the type of recommendations for this committee that will hopefully provide greater notification of the tax laws for the taxpayers.

Senator CARDIN. As I said in my opening comments, your Department is one that brings in more revenues than it costs because of the tax compliance issues. So one of the—and I don't think you're prepared to answer this today, but one of the points of ad-

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vice I think this committee would want to receive is whether you have adequate resources in order to get the job done.

We certainly don't want to be oppressive in the enforcement of our tax laws, but we want to be fair and fairness requires that people who violate or try to evade are held accountable. You need to have sufficient resources in order to deal with that.

The way that our system is organized, it requires, I think, some of your central support, as well as different circuits. So we would appreciate an honest assessment as to whether we have the appropriate resources, both in Department of Justice and in the Department of Treasury in order to make sure our laws are complied with in a fair way. So, I'd just make that offer to you, to make sure that you understand that this committee is interested in getting your assessments in that regard.

Mr. HOCHMAN. Thank you very much. If confirmed, I will make sure that you get those assessments.

Senator CARDIN. We have been joined by Senator Hatch. Thank you very much for being here.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman. I am very appreciative of your chairing this hearing. I think it's very important that we do this, even though it's at the end of the year. I'll be brief.

I am really personally appreciate that Chairman Leahy has scheduled this hearing so that we can give Attorney General Mukasey the team he needs to do the important work down at the Department of Justice. So, we're grateful to you.

Each of the Justice Department components represented by the nominees today does vital work and their combination gives us a sense of the breadth and depth of the Department's impact on our Nation, our communities, and our citizens.

These nominees today are all fully qualified to fulfill the various offices, services, and divisions. Three of them are, in fact, already working in their respective components. They bring a diversity of experience in local, State, and Federal Government, as well as private legal practice. I am very grateful to all of you for being willing to serve and serve in these very, very important positions.

Now, Mr. Chairman, I don't want to give short shrift to any of the nominees. I am very appreciative of all of you. But I do want to say a word about one of these nominees who has deep roots in my home State of Utah, and that is Scott Burns.

Scott Burns is currently Deputy Director for State, Local, and Tribal Affairs at the Office of National Drug Control Policy and he has been nominated to become Deputy Director of the entire office. Now, I've known Scott for many, many years and know him to be a man of integrity, intelligence, and dedication and hard work.

He served as elected county attorney in Iron County, Utah for 15 years. During that tenure, he also chaired the Southern Utah Law Enforcement Agency's board. He is a man of total integrity, total ability. He has testified before various committees of the U.S. Senate and the House, and during his 5 years with the Office of National Drug Control Policy has led and participated in panel discus-

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sions and town hall meetings on local, State, and national drug control policy.

Illegal drugs are a plague on America and we need people of experience, wisdom, and commitment to continue the fight. Scott is definitely one of these people.

Now, Mr. Chairman, Scott could serve anywhere in this government, or in any government. He's just that kind of a person. I've chatted with law enforcement people all over this land, Democrats, Republicans, and Independents who have just loved his service and his dedication, and the compassion, but yet strength, that he brings to the job that he currently has. Now, you can imagine what he can do in this new position.

In fact, I know that the Director insisted that he take this position because he knows how effective he's been. I don't know of many jobs in the government that are more important than what Scott will be doing in this particular job, helping our young people and people throughout the country to understand the ills of drugs and helping us all to do a better job of drug control policy.

These are exceptional people here today and I am grateful to each of you for being willing to serve in your respective capacities. We are very grateful to you, and the country should be grateful to you as well. I hope we can get these folks out of committee as soon as possible.

Thank you, Mr. Chairman. I appreciate you allowing me to make those few comments.

Senator CARDIN. Senator Hatch, thank you very much for your comments. We very much appreciate that.

Mr. Harris, if I might come back to the issues of elections. It is my understanding that CRS is supposed to help the Civil Rights Division in contacting minority community groups when State and local officials impose burdens on minority voter participation.

I mention that because we have had ongoing discussions in this committee and in the House of Representatives on conduct in the last elections and the most recent elections that have taken place. Of course, next year is an election year for our country in which we will be determining the next President of the United States. One of the important goals is to make sure that people who are entitled to vote have the opportunity to cast their ballots.

We have seen practices in communities to intimidate voters based upon being vulnerable or minority groups. We have seen that happen in many States around the country. My question to you is, do you have a game plan so that you can be active and aggressive in carrying out that role of helping minority community groups when there are procedures that are infringing upon their ability to be totally able to cast their votes?

I'll give you one example that has happened that we're looking at. In Maryland, we found in minority communities the voting lines were much longer than in non-minority communities, predominantly non-minority communities. Part of this had to do with the equipment that was available, the judges that were available, et cetera. The bottom line was that more minorities were turned away from voting in Maryland than non-minorities because of voting lines. People couldn't wait two or 3 hours to vote. That's certainly understandable.

That's just an example of some of the things that are happening in our country. We don't know the reasons for why this happened, but it seems to me that I'm interested as to what you are anticipating your Agency being used to try to deal with communities who believe that, because of State and local practices, they're being denied their right to vote.

Mr. HARRIS. Thank you, Mr. Chairman. As you know, CRS is an impartial entity. While we will not take a position on whether a community or individuals in a community have been denied their right to vote, we do appreciate that people in a particular community perceive that to be the case, perceive that they're being disenfranchised, that will create—because of their race, color, or national origin, that will likely create tension in that community.

CRS can offer technical assistance, help with rumor control, help with conciliation, mediation, the dissemination of knowledge and any efforts in a community to help with the tensions that would develop from such a denial, and we would work with the Civil Rights section as well and assist in any way we can.

Senator CARDIN. Mr. Burns, first, I want to agree with Senator Hatch. You have a very impressive background. You have a very impressive record. You have provided extraordinary leadership in regards to many of the drug issues, and we thank you very much for that. I want to cover an issue that's been raised so that we have the ability of getting your response to it, and that dealt with the allegations of partisan use of staff and traveling during the last election.

I can share with you, if you have not seen it, the letter from Congressman Waxman that was sent to Sara Taylor, outlining in pretty detail the expectations of top staff within the Agency, traveling for partisan purposes on government reimbursement. Some of those trips, I believe, were taken by you, so I want to give you a chance to state what you want to on the record in regards to this circumstance so that we have a complete record for our committee.

Mr. BURNS. Certainly. And I am familiar with those issues. Of anyone in the Office of National Drug Control Policy over the last probably 6 years, with the exception, perhaps of the drug czar, no one travels more than I do, sometimes between 150 and 200 days a year, to small towns, to counties, and to cities to meet with mayors, police chiefs, DEA SACs, whether it's on the border, whether it's on methamphetamine or prescription drug abuse, marijuana eradication, ballot initiatives to legalize it, you name it, I am the person that is sent on the road.

I have never had a conversation or received anything from the White House in the 6-years that I've been there saying, please go to a particular place and do an event with Congresswoman X or Congressman Y because they're in an election cycle. I never attended any of the meetings that were inquired about by Congressman Waxman and others. I got some questions: were you at this meeting? No. Did you go over to the White House on that day? I was probably on the road. I did not. I never received instruction or communications from anybody within ONDCP to go to a particular event for a particular Congresswoman or Congressman during the election cycle.

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So I can tell you, and anybody that knows me will tell you, that this issue isn't about Republicans or Democrats or Independents. Addiction is serious business. I would never lower myself to engage in anti-drug efforts for partisan purposes.

Senator CARDIN. Thank you for that response.

Just for the record, the memorandum that was attached lists your presence at four events. I assume you're familiar with them: May 8th in California; July 22nd in New Jersey; July 22nd in—two events in New Jersey; and then October 23rd in Pennsylvania.

Mr. BURNS. If I can address those, briefly. The event in California was an anti-methamphetamine event attended by DEA, FBI, State and local sheriffs. When I got there, a Congressman Cardozo and a Congressman Pombo were both there, and at the time—shame on me—I couldn't tell you which one was the Democrat or which one was the Republican. But I was told later that that was some type of a political event. The New Jersey events were, again, anti-methamphetamine. It was, the DEA SAC from New Jersey came up. There were a couple of town hall meetings where we went with folks. I think it was a Congressman Garrett who showed up and made some comments.

Then the other one was Congressman Sweeney. I do remember that one because—again, I'm not the person that hands out the checks or goes around announcing grants and thank-yous, but I do remember that one because, in probably 1,000 events, that's the first time when I showed up—it was a drug-free community event. I remember holding the check. I remember feeling quite silly, but we were holding this big check, like The Price is Right, and there was a Congressman Sweeney there, I believe. But again, I did not attend the function, had no idea that this was something partisan. I go out and I do my job every day for the right purposes.

Senator CARDIN. I thank you for that response. That certainly clarifies the record and I appreciate that very much.

Senator Hatch.

Senator HATCH. I just have to say that I've known Scott for a long time. I remember when he put his own brother in jail, which was very interesting to a lot of us out there. Yet, he's a straightforward law and order guy who understands what these kids are going through with regard to drugs. I appreciate the way you've interrogated him and handled this whole meeting today.

I have inestimable regard for these people, but in particular Scott, because I've known him for, I guess, around 30 years, now, 31 years. I've never seen him once not do his duty, as you and I would like him to do it.

But thank you, Mr. Chairman. I want to congratulate all of you. I hope we can get you through as quickly as possible. It's important that we have these components filled down at the Justice Department. I think each of you are just superb for your respective jobs.

Senator CARDIN. Let me concur with Senator Hatch. I hope that this committee can act promptly on the nominations.

The hearing record will remain open for 1 week. Without objection, Senators' statements will be made part of the record. I would ask the witnesses to respond in a timely manner to additional written questions from the committee.

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Having said that, we do hope, Senator Hatch, that we will be able to act as quickly as possible on as many of these nominations as possible in order that, particularly Department of Justice, can have the personnel and top management necessary to move forward with their mission, confirmed by the U.S. Senate. So, we hope to move those as promptly as we possibly can.

Senator HATCH. Mr. Chairman, I really personally believe that these could all be moved, with or without a committee mark-up, because they are important positions. These are important people. If it's possible to do it, we ought to do it. If it isn't, then we have to do it as soon as we can.

Senator CARDIN. I concur in your thoughts. With that, the committee will stand adjourned.

[Whereupon, at 11:14 a.m. the hearing was concluded.]

[Questions and answers ans submissions for the record follows.]

QUESTIONS

Senator Edward M. Kennedy
Questions for the Record
Senate Judiciary Committee hearing on "Executive Branch Nominations"
Held on December 18, 2007

To Scott M. Burns

1. As Deputy Director for the White House Drug Policy Office, it has been reported that, along with Director John Walters, you made frequent trips around the country to promote the work of the office and lobby state legislatures to reject certain initiatives.

These trips have gained attention because the House Committee on Oversight and Government Reform recently uncovered evidence that Mr. Walters and his deputies traveled to numerous events with vulnerable Republican members of Congress in the months leading up to the 2006 elections. By law, the Drug Policy Office is required to be non-partisan. Chairman Henry Waxman is concerned that these taxpayer-financed trips appear to have been orchestrated by President Bush's political advisers and often combined with the announcement of federal grants or actions that benefited the districts of the Republican members.

In a letter last July to the former Deputy Assistant to the President and Director of Political Affairs at the White House, Sara Taylor, Chairman Waxman wrote: "Your memo shows that John Walters, the nation's drug czar, and his deputies traveled at your suggestion to 20 events with vulnerable Republican members of Congress in the months before the 2006 elections. These trips were paid for by taxpayers. On several occasions, they were combined with the announcement of federal grants to the states or districts of the vulnerable Republican members. You included no Democrats or Independents in your memo of suggested travel for Director Walters."

Questions:

- **Did you have any role in the planning, coordination, or strategy behind these trips?**
- **How many trips did you make for the Drug Policy Office in the year before the 2006 elections?**
- **What is your response to Cong. Waxman's concerns that these trips were improperly motivated by political goals?**
- **Did you ever raise any concerns about how the trips were scheduled and conducted?**

2. According to news reports, at a conference in Mississippi last year, you advocated random drug testing in public schools—not just for select groups such as athletes, but for all students—as a way to identify children who need help and to deter illegal drug use. "We have this disease and it is being spread from child to child," you reportedly said. "It costs about $35

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for a [drug] test. Whether or not a kid is addicted to a disease is as important as half the price of a pair of gym shoes or the current jean craze." You reportedly argued that testing should start in junior high school, because that's when children ages 11 to 13 begin experimenting with drugs.

Questions:

- **Do you believe that a program of state-sponsored random drug testing for all junior high school and high school students raises any constitutional concerns? What are your views on the constitutional limits on the power of federal, state, and local governments to require random drug testing on public school students?**

- **If you're confirmed as Deputy Director of National Drug Control Policy, will you take any steps to encourage the use of random drug testing in schools?**

- **In addition to the legal, ethical, and teaching concerns it raises, the scientific evidence suggests that random drug testing of students isn't effective. In 2003, the largest national study on student drug testing found no difference in illegal drug use among students in schools with drug testing or without it. In 2006, a national survey found that 83 percent of physicians oppose drug testing in public schools. In October this year, a two-year study funded partly by the National Institute on Drug Abuse found that random testing for alcohol and other drugs "does not reliably keep student-athletes from using. In fact, the mere presence of drug testing increases some risk factors for future substance use." How do you respond to these findings?**

3. If you're confirmed, in addition to your other responsibilities on substance abuse, would you commit to making the need to eliminate waiting lists for treatment for such abuse a priority, and agree to hold regional summits on this issue?

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QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, DC 20530*

January 28, 2008

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the responses of Cynthia Dyer, Director of the Office on Violence Against Women, to written questions from Senator Biden following Ms. Dyer's confirmation hearing held on December 18, 2007.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

Senate Judiciary Committee Hearing
Nomination of Cynthia Dyer to be
Director of the Office on Violence Against Women
December 18, 2007

Written Responses to Questions of Senator Joseph R. Biden, Jr.

(1) One of the cornerstones of the Violence Against Women Act is the state formula grant program entitled the Services, Training, Officers, and Prosecutors ("STOP") grant program. Utilizing STOP grant resources, States are able to develop coordinated community responses to domestic violence and rape, and develop innovative and effective strategies such as dedicated domestic violence police units, prosecutorial training or victim advocates in each courtroom. An important component of the STOP grant program is consistent communication, coordination and collaboration between individual state VAWA administrators and the Office on Violence Against Women ("OVW"). Recently, I've been concerned by informal reports of a growing communication gap between State VAWA administrators and OVW. Under your leadership, what kind of regular assistance and communication will occur between your Office and State VAWA administrators? Would you support quarterly conference calls or regional meetings with OVW and State VAWA administrators?

RESPONSE: As a former grantee in Texas of STOP funds, I agree that it is vitally important to have consistent and ongoing communication, coordination and collaboration between individual State STOP Administrators and OVW. To this end, I will ensure that the existing mechanisms for communication continue to function at the highest level possible. Within OVW, a unit of five Program Specialists, under the supervision of an Associate Director, focuses on administering the STOP Formula Grant Program. The STOP Unit engages in regular communication with STOP Administrators through one-on-one phone calls, e-mail, and conference calls. Each STOP Administrator has access to an assigned Program Specialist. STOP Administrators also often contact the Associate Director or OVW attorneys regarding statutory or other questions.

Furthermore, STOP Administrators will continue to have access to OVW technical assistance providers. I am pleased to note that, in Federal Fiscal Year 2007, OVW entered into a new cooperative agreement with the Alliance of Local Service Organizations (ALSO) specifically to provide technical assistance to STOP Administrators. OVW expects that ALSO will assist the STOP Unit in improving its communication with STOP Administrators and its ability to respond quickly and effectively to their concerns. This past year, ALSO helped OVW organize our annual National STOP Administrators Meeting, held in November in New Orleans. Other technical assistance for STOP Administrators has included regional meetings and a new STOP Administrators Manual. As discussed in response to question 3, below, OVW technical assistance providers also serve as resources to STOP Administrators regarding the new VAWA 2005 STOP Formula Grant Program certifications.

(2) Under your leadership, will OVW support the new Association of VAWA Administrators ("AVA"), including permitting STOP administrative funds to pay for AVA dues? How will your Office work closely with AVA?

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RESPONSE: As Director, I plan to work closely with all STOP Administrators, including those who join AVA. To this end, I have already begun the process of reaching out to some of those STOP Administrators who have been instrumental in forming AVA. I hope to meet informally with them in the near future and, with their help, plan a larger meeting between OVW and AVA's Board members and regional leadership.

As for the issue of permitting STOP Administrators to use STOP Formula Grant Program funds to pay for their membership in AVA, I am not persuaded that this would be a permissible and appropriate use of STOP grant funds. As you may know, the former Acting Director of OVW determined that the use of STOP funds for AVA dues was not allowable under federal cost principles. In particular, she was concerned that the AVA – which is still in a formative stage – has not identified to OVW activities that it would perform that (1) are permissible uses of federal funds and (2) would not be provided for with other federal funds, including OVW technical assistance funds. OVW has explained to the STOP Administrators that they need to articulate clearly to OVW how AVA's activities would meet this standard before we could approve such a use of funds.

(3) Under your leadership, how will OVW provide State VAWA administrators with better guidance and interpretation on the Violence Against Women Act of 2005, particularly pertaining to the new STOP grant requirements in Section 101, such as certification on polygraph testing or judicial notification?

RESPONSE: OVW already has made significant efforts to educate STOP Administrators regarding the new STOP Formula Grant Program certification requirements. OVW has provided both formal training and ad hoc advice to States regarding compliance with the new certifications. Prior to the passage of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), at our September 2005 National STOP Administrators' Meeting, OVW briefed the Administrators regarding VAWA 2005's pending passage and possible ramifications. Again in November 2006 and November 2007, at our annual STOP Administrators' meetings, OVW attorneys reviewed the new STOP certifications and answered administrator questions. OVW also has hosted two conference calls with interested STOP Administrators regarding the new certifications, and OVW has distributed to STOP Administrators a list of "Frequently Asked Questions" that addresses the new certifications. OVW attorneys have responded to a number of technical assistance calls from State officials and coalitions regarding compliance with the new requirements. Moreover, the Executive Office of United States Attorneys' point of contact on VAWA issues has provided assistance to States regarding compliance with the new judicial notification certification.

OVW also has tasked certain technical assistance providers with helping States and others regarding how to implement changes in State laws and policies that will satisfy the new certification requirements. At the November 2007 annual meeting, OVW technical assistance providers presented workshops for the STOP Administrators on each of the new certifications. In particular, the Iowa Coalition Against Sexual Assault and the Maryland Coalition Against Sexual Assault (MDCASA) provided information on the new polygraph testing and revised forensic exam certifications and the National Council of Juvenile and Family Court Judges

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(NCJFCJ) and the National Center on Full Faith and Credit offered technical assistance on the judicial notification certification. These organizations, as well as other OVW technical assistance providers, are available to the States to answer questions and offer additional technical assistance. Among other ongoing work, MDCASA is developing a toolkit specifically designed to assist States in effectively complying with the new forensic exam requirements, and NCJFCJ is developing sample judicial notification forms.

(4) Under your leadership, how will you ensure that OVW issues cohesive, clear and well-defined policy decisions to State VAWA administrators? How will you institute adequate mechanisms to respond to VAWA administrators' requests for justifications or review of policy decisions?

RESPONSE: I agree that it is important that OVW provide clear guidance to the STOP Administrators. I would note that, in administering a formula grant program, OVW has limited opportunities for making "policy" decisions: most OVW directives that affect the STOP Formula Grant Program are dictated by statute. There is room, however, to improve our communication to STOP Administrators regarding program requirements. One recent innovation has been the issuance of a "consolidated" list of frequently asked questions and answers regarding the STOP Formula Grant Program. This document reiterates, revises, and replaces STOP Formula Grant Program guidance going back to 1998, which was often issued in piecemeal form. The document is available on our website, and I am committed to ensuring that it is frequently updated so that STOP Administrators have access to one, current version of OVW guidance.

In addition, a revised set of OVW's STOP Program regulations, which reflect statutory changes made by both VAWA 2000 and 2005, is under review within the Department. These regulations will be published for public comment, and I hope that States will take the opportunity to participate in this process.

Finally, if STOP Administrators have particular questions or concerns, they always have access to their Program Specialist, their Associate Director, and OVW's leadership.

(5) Would you support increased technical assistance for State VAWA administrators on topics like Implementation Plan requirements or helping States meet federal certification requirements?

RESPONSE: I support providing STOP Administrators with the best possible technical assistance, but I also recognize that every dollar spent on technical assistance reduces the funding available to provide direct services to victims and their communities. In making funding decisions, I plan to balance both these concerns. As noted in my responses to questions one and three, above, OVW has made an FY 2007 award for a STOP Program technical assistance provider and has tasked a number of other organizations with assisting States to meet their certification requirements. On the subject of Implementation Plans, OVW has conducted several conference calls on this subject with STOP Administrators and has provided STOP Administrators with an updated Implementation Plan Tool Kit, which incorporates the statutory requirements of VAWA 2005.

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(6) A critical component of the Director's responsibility is to report directly to the Attorney General and act as the Department's bully pulpit on issues of domestic violence and sexual assault? Do you expect to report to the Attorney General on a regular basis, and if so, how frequently? Other than personal meetings, are there other reporting mechanisms you will utilize, such as submitting written reports or updates? How do you intend to use the power of your position to promote anti-domestic violence policies throughout the Department of Justice?

RESPONSE: As Director, I take very seriously my responsibility to advocate an enhanced response to violence against women, both outside the Department and within it. I expect to meet with the Attorney General and other Department leaders on a regular basis.

(7) Kindly describe the current OVW structure, including but not limited to the specific units, each unit's responsibilities, the number of staff within each unit (including detailees) and their job titles and responsibilities. Please include an updated Office Organization Chart, if available. Also, please indicate if you have any plans to reorganize or change the Office structure in any substantive manner, including any hiring or terminations.

The following description reflects current OVW structure. As I gain more insight into the daily operations of OVW, I may revisit the internal structure; however, at this time I have no immediate plans to substantially change the structure, including any hirings or terminations. I am working on a revised organization chart, which includes the new Deputy Director for Tribal Affairs.

OVW is a component of the U.S. Department of Justice. I plan to fulfill my duties and responsibilities as Director as set forth in the Violence Against Women Office Act. The Director, who heads the Office, serves as the liaison between the Department of Justice and Federal, State and international governments regarding the crimes of domestic violence, sexual assault, dating violence and stalking. The Director is responsible for handling the Department's legal and policy issues regarding the implementation of VAWA and oversees an annual budget of almost $400 million.

The Office of the Director includes the Principal Deputy Director, who reports directly to the Director, supports the Director as the liaison between the Department of Justice and Federal, State and international governments, and acts as the primary point of contact between OVW staff and the Director. In addition, the Office of the Director includes the Deputy Director for Outreach, a Public Affairs Specialist, Special Assistant to the Director, and Executive Assistant to the Director.

The Deputy Director for Tribal Affairs is responsible for administering grant programs, related grant awards and relevant technical assistance to Indian tribes, tribal courts, tribal organizations, and tribal non-profit organizations. The Tribal Affairs Division includes four Program Specialists under the management of the Deputy Director for Tribal Affairs.

OVW also has four Associate Directors, each of whom is responsible for one of the following program units: the Criminal and Civil Justice Division, Special Victims Division, Community and Formula Division, and Services Division.

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The Criminal and Civil Justice Division is responsible for administering grant programs, related grant awards and relevant technical assistance designed to encourage State, local, and tribal governments and courts to treat violence against women as serious violations of criminal law; to strengthen civil and criminal legal assistance programs for victims of domestic violence, dating violence, sexual assault, and stalking; and to enhance culturally and linguistically specific services for victims of these crimes. The Division includes nine Program Specialists.

The Special Victims Division is responsible for administering grant programs, related grant awards and relevant technical assistance designed to address the issues of elder abuse, violence against individuals with disabilities, and visitation with and exchange of children. The Division includes three Program Specialists.

The Services Division is responsible for administering grant programs, related grant awards and relevant technical assistance that enhance the response to sexual assault, domestic violence, dating violence, and stalking in rural communities and provide transitional housing and related support services for victims. The Division includes four Program Specialists.

The Communities Division is responsible for administering grant programs, related grant awards and relevant technical assistance for the purpose of coordinating State victim services activities and strengthening the higher education community's response to sexual assault, stalking, domestic violence, and dating violence crimes. The division also administers formula grants to States in order to promote a coordinated, multidisciplinary approach to improving the criminal justice system's response to violent crimes against women. The Division includes five Program Specialists.

OVW also includes a Legal Counsel Division and Administration Division. The Legal Counsel Division is responsible for providing legal advice and guidance to OVW management, staff, and award recipients to ensure compliance with applicable laws and regulation; it also assists the management of OVW in review and development of legislation, regulations, and policies that enhance victims safety and offender accountability. The Legal Counsel Division includes three attorneys. The Administration Division is responsible for the management of OVW's budget, finance, human resources, information technology, and support services. The Administration Division includes seven staff members.

(8) Please describe your priority areas for OVW during your tenure? What is your vision for the Office?

RESPONSE: Overall, I hope to use my time as Director to continue to increase the profile of the Office and raise public awareness regarding sexual assault, domestic violence, dating violence, and stalking. In addition, I plan to focus on three particular issues during my tenure. First, I intend to increase access to holistic, full civil legal assistance for victims. As a former prosecutor, I know the limits of what the criminal justice system can accomplish for victims. Second, I plan to strengthen OVW's outreach and service to victims of sexual assault. Unfortunately, our work improving responses to sexual assault victims has not yet matched the advances that we have made against domestic violence. Finally, as a former prosecutor, I am committed to finding the best way to keep victims safe and hold offenders accountable for these

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crimes. In particular, I believe we need to expand our dialogue in light of the recent Supreme Court decisions of *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) and *Davis v. Washington*, 547 U.S. ___, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), which are having a profound impact on the way that prosecutors, law enforcement, and the courts handle domestic violence and other cases.

(9) What role do you expect your Office to play in drafting, reviewing and editing federal legislation that impacts domestic violence, sexual assault and stalking? Please detail your Office's procedures with respect to legislation. Please advise me if your Office has had an opportunity to review my proposed legislation, the National Domestic Violence Volunteer Attorney Network Act (S. 1515) and if so, does OVW supports the initiative? And if not, why not?

RESPONSE: I expect that OVW will continue to play a leading role in the Department in drafting, reviewing and editing federal legislation that impacts domestic violence, dating violence, sexual assault, and stalking. It is my understanding that OVW has performed this function since its inception and, most particularly, during the reauthorization of VAWA in both 2000 and 2005.

With regard to a domestic violence volunteer attorney network, we are keenly aware that there is a great need for adequate, trained legal representation for victims of domestic violence and that there are few sources of support for such legal services. Indeed, our Legal Assistance for Victims (LAV) Grant Program has been and continues to be OVW's most competitive grant program. As a result, we are always interested in strategies that have the potential to increase the number of attorneys who have been trained to represent victims. In the past, OVW has attempted to support state and local projects that focused on the *pro bono* provision of legal representation; it has been our experience, however, that *pro bono* attorneys are not willing to commit to the long-term, wrap-around holistic representation that victims of domestic violence and sexual assault most often need. Given their other work, attorneys who work on violence against women cases on a limited *pro bono* basis often do not expect to continue with the same victim for many years through many different legal hurdles. The short-term representation that they are most typically able to provide often can result in greater difficulties for victims when their cases are passed along to LAV-funded attorneys once the cases becomes complex or show signs of lasting longer than originally expected. The LAV-funded attorneys are often left to unravel the work of the *pro bono* attorney, and, unfortunately, sometimes what already has transpired limits what can later be done for a victim. We have heard from LAV attorneys that these are some of the most difficult cases to handle.

We appreciate the bill's focus on increasing the pool of free legal representation available to victims and encouraging *pro bono* representation. We would encourage you, however, to consider a method that would create a link between *pro bono* representation and existing LAV-funded projects to ensure that victims are not "dropped" when *pro bono* representation ends.

(10) During your tenure, do you expect new selections to the National Advisory Committee on Violence Against Women and a new agenda? During your tenure, do you expect the Federal

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Interagency Coordinating Board on Violence Against Women to be active? And if so, what issues will you advise the Board to address?

RESPONSE: In 2006, the National Advisory Committee on Violence Against Women (the "Committee") was re-chartered and charged with providing policy advice to the Attorney General and Secretary of Health and Human Services (HHS) concerning the implementation of VAWA, raising public awareness regarding violence against women, and facilitating cooperation among members of the criminal justice system and our communities. The final meeting of the Committee was held on December 3-4, 2007 in Washington D.C. The Committee provided recommendations to OVW regarding child witnessing, teen dating violence, outreach to faith-based and community organizations, and enhancing victim services. I plan to recommend to the Attorney General that he select members for a new Committee and term to assist the Department and HHS as we continue to move forward to raise public awareness and eradicate violence against women.

In addition, I plan to continue to hold meetings of the Federal Interagency Leadership Council on Violence Against Women. The Federal Interagency Leadership Council held its second meeting in November 2007. At this meeting the group elected to focus on the following important topics: sexual assault in Indian country, violence against women in later life, teen dating violence, and providing enhanced services for victims with disabilities and mental health problems. I look forward to facilitating another meeting of the Federal Interagency Leadership Council this spring.

(11) The Violence Against Women Act of 2005 included new provisions aimed specifically to battered immigrant women. What steps is the Office taking to ensure that programs are serving battered immigrant women?

RESPONSE: Immigrant women who are victims of domestic violence, dating violence, sexual assault and stalking face uniquely difficult hurdles in escaping violence. Language and cultural barriers, lack of information about their rights, and fear - fear of their abusers, fear of government, fear for their children - all make it extremely difficult for these individuals to get help. OVW has made reaching and serving immigrant victims a priority.

OVW addresses the needs of battered immigrants through its technical assistance initiative and discretionary grant programs. For example, immigration status, culture, religion, language, isolation and lack of information on available resources continue to undermine access to legal protections and services for immigrant victims of domestic violence, human trafficking, and sexual assault. Informed and well-trained advocates, attorneys and justice system personnel are key to ensuring that immigrant victims have access to services and the justice system. OVW currently funds four technical assistance projects that aim to improve the ability of our grantees to meet the needs of immigrant victims.

First, the Immigrant Women Program of Legal Momentum (IWP) provides training and technical assistance to improve the capacity of OVW grantees to provide culturally competent and effective services for immigrant victims of violence against women and their children..

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Second, the Catholic Legal Immigration Network, Inc. (CLINIC) works with OVW, the Iowa Coalition Against Domestic Violence, and local domestic violence consultants to develop training for legal advocates on immigration issues relating to VAWA.

Third, the Iowa Coalition Against Domestic Violence's Advanced Special Immigrant Survivors Technical Assistance (ASISTA) Project provides comprehensive technical assistance on the intersection between immigration and domestic violence law. Its purpose is to centralize, enhance and expand immigration assistance to frontline advocates and attorneys who provide legal assistance to immigrant victims.

Fourth, KARAMAH: Muslim Women Lawyers for Human Rights (Karamah), in collaboration with Boat People S.O.S. (BPSOS), provides training to grantees and law enforcement agencies to provide them with expertise and the problem-solving strategies they need to meet the challenges of addressing domestic violence in immigrant communities, particularly Muslim and Southeast Asian communities.

(12) In the Violence Against Women Act of 2005 the issues of sexual assault, teen dating violence and stalking have been added to several of the grant programs' purpose areas. Under your direction, what will OVW do to ensure that your staff has expertise in these new issue areas and that data your office collects will reflect these new issue areas?

RESPONSE: As the Director of OVW, I am committed to ensuring that OVW staff maintain a high level of expertise in all areas of violence against women and that we continue to expand our knowledge on emerging issues within the field. I have been very impressed with the level of knowledge and experience that the OVW staff possesses on the issues of violence against women, including sexual assault, domestic violence, teen dating violence, and stalking. There are several staff members who, like me, came to OVW after having years of experience working in the field with domestic violence and sexual assault survivors; these include a former sexual assault forensic examiner (SAFE) advocate, a hot line worker, a sexual assault peer advocate, a rape crisis counselor, and a counselor/therapist who worked with teen dating violence victims. One of our staff members served on the board of a state sexual assault coalition for six years.

Furthermore, OVW staff have the unique opportunity to collaborate with experts from other Federal agencies, national criminal justice and advocacy organizations, and in the communities that OVW is supporting with grant funds. Through day-to-day interaction with the field and by attending education and training events sponsored by our technical assistance providers, we are positioned to consistently refresh and expand our own knowledge of the issues and to identify emerging issues we need to explore in partnership with the field.

To ensure that OVW collects data from our grantees reflecting these new issue areas, we are in the process of revising all of our data collection tools to reflect the new program purpose areas authorized by VAWA 2005. In addition, OVW has solicited and received recommendations from the sexual assault advocacy community regarding how to make our progress report forms better reflect the type of services provided to victims of sexual assault. With new progress reporting forms in place and through continued training and technical assistance for our grantees,

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we anticipate that we will collect data that more accurately reflects how grant funds are being utilized.

(13) There are informal reports that several areas of the country are having difficulty meeting new requirements (set forth in the Violence Against Women Act of 2005) that ensure that sexual assault victims are not polygraphed as a condition of proceeding with an investigation. What steps will your Office take to help these errant localities? What oversight will your Office provide and how will your Office respond when complaints are forwarded to your Office that allege a state or territory is noncompliant with polygraph requirements?

RESPONSE: OVW provides States with two types of technical assistance to help them comply with the new certification requirements that VAWA 2005 added to the STOP Formula Grant Program. First, OVW attorneys provide both formal training and ad hoc advice to States, territories, and other jurisdictions regarding compliance. Most recently, this issue was addressed at the November 2007 STOP Administrators meeting in New Orleans. Second, OVW has tasked a number of its technical assistance providers with providing assistance to States, territories, and other jurisdictions regarding how to implement changes in State laws and policies that will satisfy the new certification requirements. In particular, OVW usually directs requests regarding the polygraph prohibition certification to the National Center for Victims of Crime. We note that, to date, OVW has received many more inquiries regarding other new certification requirements than regarding the polygraphing prohibition. This may be because States, under VAWA 2005, have until January 5, 2009 to bring their laws, policies, or practices into compliance with the prohibition.

Absent any negative information to the contrary, OVW will accept the signed certification of a State that has meet the certification requirements of the STOP Formula Grant Program. If OVW receives complaints alleging that a State or Territory (or, in the case of the Arrest Program, another jurisdiction) is not, in fact, complying with a program certification, OVW will investigate the matter with the grantee. Our usual practice is to raise the issue informally and then follow up with a letter indicating that we have received information regarding noncompliance and request an explanation. Grantees are informed that, if they do not provide an adequate response or make necessary changes, OVW may terminate their funding. If appropriate, OVW may refer the grantee to one of our technical assistance providers for advice on best practices implemented in other jurisdictions. In the past, this practice has proved an effective means of addressing noncompliance.

(14) Title IX of the Violence Against Women Act created a tribal unit in your Office and a Deputy Director for Tribal Affairs position. What steps will you take to recognize and support the authority of the Deputy Director for Tribal Affairs across the Office and throughout the Department of Justice? What actions will you take to provide the Deputy Director direct and regular access to you so she or he might best carry out the duties delineated in Section 907 of the Violence Against Women Act of 2005?

RESPONSE: As Director, I plan to work very closely Lorraine Edmo, the Deputy Director for Tribal Affairs, on all grant-making and policy decisions that affect tribal governments and victims in Indian country. I can assure you that I see tribal issues and safety of Indian women as

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a priority for OVW. I have an open-door policy with all OVW staff and I fully expect to engage in regular and daily communication with Lorraine Edmo regarding tribal affairs.

(15) The new Grants to Indian Tribal Government Program in Title IX of the Violence Against Women Act of 2005 was crafted to streamline administrative requirements and increase access for Indian tribes to grant funds and technical assistance. What steps will you take to achieve these goals?

RESPONSE: OVW made its initial awards under the Grants to Indian Tribal Governments Program (Tribal Governments Program) in Federal Fiscal Year 2007. In response to the solicitation released January 2007, OVW received 106 applications for funding from eligible applicants in 24 States, including 43 applications from applicants who did not previously receive any OVW grant funding. As anticipated, OVW did not have sufficient funding to meet the level of need articulated by each applicant. The 106 applicants requested a total of $57,825,703 in grant funding; however, OVW had just over $32 million available. OVW made 82 grant awards, which included 30 new grant award recipients. In Federal Fiscal Year 2007, tribal governments, tribal consortia, and tribal nonprofit organizations also submitted applications for funding to other OVW discretionary grant programs. These applicants requested more than $24 million in funding, bringing the total amount of OVW funding requested to support Indian country projects in Fiscal Year 2007 to approximately $82 million.

Based on our experience with the Federal Fiscal Year 2007 funding cycle, OVW anticipates that the amount of funding available to make awards under the Tribal Governments Program again will not be sufficient to meet the total demand for funding from Indian country in Federal Fiscal Year 2008. I will work with the Deputy Director for Tribal Affairs and other members of the senior management team at OVW to explore options for streamlining the application and reporting process for tribal government grantees, including whether it would be feasible to allow tribal governments to submit a single application for more than one OVW grant program, and whether it would be feasible to offer tribal government applicants a single grant award that is funded by multiple OVW grant award programs.

(16) Victims of domestic violence, sexual assault, and stalking need a continuum of care from emergency advocacy to legal assistance to long-term housing. Without such "wrap around" services victims may be vulnerable to continued assault and the prolonged effects of trauma. What role will the Office on Violence Against Women play in promoting comprehensive services to victims of violence against women?

RESPONSE: The twelve grant programs administered by OVW promote "wrap around" services to victims through a coordinated community response to violence against women. Because strong partnerships with different players within the criminal justice system are essential, communities seeking support are required to partner with non-profit, non-governmental advocacy organizations. This is to ensure that a community's response to violence against women is grounded in expertise and understanding of the needs of survivors of domestic violence, dating violence, sexual assault, and stalking, including knowledge of the full range of services and treatment necessary to remedy the injustice that has been done.

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The President's Family Justice Center Initiative has provided support to fifteen sites across the nation with funds from multiple grant programs and is one example of how a comprehensive, coordinated and advocacy driven response can make a difference. Using a model of collaboration to promote "wrap around" services in one location, the Family Justice Centers seek to marshal all available resources in a community into a coordinated, centralized service delivery system with accountability to victims and survivors. On-site partners include domestic violence and sexual assault advocates, the police, prosecutors, victim-witness specialists, civil legal attorneys, linguistically and culturally specific service providers, forensic medical staff, and child development specialists.

OVW will continue to seek innovative approaches to promoting "wrap around" services for victims and survivors and in doing so will continue to seek the counsel and advice of the leadership in the field, particularly within State and tribal sexual assault and domestic violence coalitions and other advocacy-based organizations.

(17) Child custody is one of the least improved and most troubling areas of domestic violence. Family courts award custody and unsupervised visitation to perpetrators of abuse within the family, sometimes ignoring clear evidence of the history of abuse. Do you support developing standards and training for courts, guardian ad litem and other child evaluators handling custody cases where abuse is an issue? Do you intend to take steps to address the intersection of domestic violence and child custody? And if so, please describe your plans.

RESPONSE: Post separation violence is a serious issue for victims of domestic violence because abusers often use the custody process as a means to maintain contact and control of the victim once she has left the relationship. Many victims are afraid to raise domestic violence as an issue in divorce and custody proceedings because they are increasingly viewed as "unfriendly" parents or worse they may be accused of parental alienation. This is a troubling trend that is increasing as victims continue to lose custody and many are now the "visiting" parent. Because many victims do not report abuse until after the relationship has ended, courts are increasingly skeptical of these allegations and believe that victims are using domestic violence as a tool to gain sole custody. Therefore many courts are ignoring reports from the victim and are ordering joint custody or unsupervised visitation unless there is clear and convincing evidence of domestic violence. Additionally, many judges believe that access to both parents is in the best interest of the child(ren), even if one parent has abused the other, and only restrict visitation if there is evidence to show that the parent has also been abusive toward the child(ren).

OVW has been addressing custody and visitation through the development of national training and resource materials with the intent to give communities and professionals the tools and strategies to effectively address these issues. Examples of our work in this area are as follows:

- In December 2007, OVW published the Guiding Principles of the Safe Havens: Supervised Visitation and Safe Exchange Grant Program (Guiding Principles). The Guiding Principles are meant to guide the development and administration of Supervised Visitation Programs, but also to address how communities should address domestic violence in the larger context.

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- In order to educate judges, OVW is in the process of developing a bench card for use in custody and visitation cases and, in partnership with the National Council of Juvenile and Family Court Judges, has developed a judicial training for Safe Havens: Supervised Visitation and Exchange Program grantees.

- OVW provides funding to and works closely with the Legal Resource Center on Violence Against Women (LRC) to provide education, training, and assistance to improve the representation of domestic violence survivors in interstate custody cases. LRC operates a national toll-free telephone line and provides telephone and electronic technical assistance to practitioners; develops and delivers training programs for practitioners; maintains a network of attorneys who are willing to take inter-jurisdictional custody cases; maintains an Internet-based electronic database of relevant state laws; and works with State and local bar associations and law firms to recruit *pro bono* attorneys in interstate custody cases involving domestic violence. LRC is also in the process of developing the following products: 1) case law summaries on interstate custody and domestic violence cases; 2) sample briefs in interstate custody legal issues and descriptions of relevant jurisdictional laws; 3) a Uniform Child Custody Jurisdiction and Enforcement Act flowchart for judges; and 4) a relocation checklist and user's guide for attorneys and advocates.

- Under the Legal Assistance for Victims Program (LAV), OVW routinely provides training and technical assistance to grantees on custody issues.

- In Federal Fiscal Year 2008, we will begin developing a curriculum on custody and visitation for Safe Havens: Supervised Visitation and Exchange Program grantees.

In all of these areas OVW would like to focus more attention. We would also like to develop training materials and resources for Guardians Ad Litem and custody evaluators. We feel that it is important to provide tools to custody evaluators to help them develop proper assessments when domestic violence is present and develop exceptions in those cases. Through the LAV Program, we are also looking at ways we can increase representation for victims during divorce and custody hearings and ensure that the attorneys have the proper training and resources to adequately defend allegations of parental alienation.

(18) The Violence Against Women Act of 2005 contained a new federal mandate prohibiting State courts from publishing court records, including protection orders, on the Internet that would publicly disclose the names or locations of victims of domestic violence, dating violence, and stalking. Yet, courts have increasingly been posting protection order information on the Internet. Not only is this action contrary to the law, it is placing victims at risk of retaliative violence from their abusive partners. What will your Office do to reverse this unfortunate and dangerous trend among State courts?

RESPONSE: OVW has only a limited ability to influence whether State courts post protection order information on the Internet. Although 18 U.S.C. § 2265(d)(3) provides that States shall not make available publicly on the Internet certain protection order information, the statute does not authorize OVW to take any action against a State whose courts disregard this prohibition. The

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Internet publication prohibition in section 2265(d)(3) stands in marked contrast to the STOP Formula Grant Program certifications. OVW is situated very differently with regard to those STOP certifications that apply to courts, such as the prohibition on charging filing fees to victims and the new judicial notification certification. In the case of those certifications, the threat of losing formula grant funding encourages State courts to revise their policies and practices; however, in the case of the Internet prohibition, OVW has no comparable leverage over State courts. OVW can affect State court practices through training and technical assistance. For example, OVW has funded the National Judicial Institute on Domestic Violence to train state court judges and judicial officers to respond to violence against women. I plan to ensure that training for the judiciary and court personnel, including training regarding best practices for victim safety, continues to be a priority for OVW.

(19) In late 2004, the Department of Justice issued the first-ever National Protocol for Sexual Assault Medical Forensic Examinations. This document provides meaningful help to improve the treatment and services offered to sexual assault victims by our nation's hospitals and clinics. However, news reports indicated that all information related to the birth control method called emergency contraception was removed from the final publication. As director of OVW, are you willing to work with the experts to update the existing National Protocol for Sexual Assault Medical Forensic Examinations to include information about emergency contraception?

RESPONSE: Yes; the National Protocol for Sexual Assault Medical Forensic Examinations (Adult/adolescent) is currently outdated and needs to be revised to reflect VAWA 2005 changes.

(20) What efforts, if any, is your Office taking to consult and collaborate with the U.S. Department of Homeland Security regarding the issuance of regulations regarding gender-based asylum claims for women and girls seeking refugee from horrific persecutions such as "honor" killings, female genital mutilation or domestic violence?

RESPONSE: These regulations will be issued jointly by the Department of Justice and the Department of Homeland Security (DHS), with DHS taking the lead policy role in developing the asylum regulations. Since I am new to the Department, I have been advised that OVW was involved in drafting the original regulation and we stand ready to work with all of our partners as the regulation process moves forward.

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, DC 20530*

January 18, 2008

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the responses of David Hagy, nominee to be Director of the National Institute of Justice, to written questions from yourself and Senator Feingold received following Mr. Hagy's confirmation hearing on December 18, 2007.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

WRITTEN QUESTIONS OF SENATOR LEAHY TO DAVID HAGY, NOMINEE FOR DIRECTOR, NATIONAL INSTITUTE OF JUSTICE

I have brought to your attention in your current capacity the possibility of the National Institute of Justice conducting a study of the collateral consequences of criminal convictions in each of the States, the District of Columbia, and U.S. territories. It is generally known that there can be consequences with respect to the right to vote and with respect to the right to purchase firearms, but my sense is that depending on the jurisdiction and the type of crime, there are a wide range of collateral consequences about which lawmakers and policymakers are unaware.

In connection with the Senate Judiciary Committee's favorable consideration and reporting of the Recidivism Reduction and Second Chance Act, S.1060, we included the following language:

> **SEC. 245. NATIONAL INSTITUTE OF JUSTICE STUDY AND REPORT ON COLLATERAL SANCTIONS.**
>
> **(a) Study Required.--The Director of the National Institute of Justice (referred to in this section as the `Director') shall conduct a study to determine and compile the collateral consequences to convictions for criminal offenses in the United States, each of the 50 states, each Territory of the United States, and the District of Columbia.**
>
> **(b) Activities Under Study.--In conducting the study required under this section, the Director shall identify any provision in each constitution, law, or administrative rule of each jurisdiction described in subsection (a) that imposes a collateral sanction or authorizes the imposition of a disqualification, and any such provision that may afford relief from such collateral sanction or disqualification;**
>
> **(c) Report.—**
>
> > **(1) In general.--Not later than 1 year after the date of the enactment of this Act, the Director shall submit to Congress a report on the activities carried out under this section.**
> > **(2) Contents.--The report submitted under paragraph (1) shall include a compilation of citations, text, and short descriptions of the provisions identified under subsection (b).**
> > **(2) Distribution.--The report submitted under paragraph (1) shall be distributed to the legislature and chief executive of each of the 50 states, each Territory of the United States, and the District of Columbia.**
>
> **(d) Definitions- In this section:**
>
> > **(1) the term "collateral sanction"--**

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(A) means a penalty, disability, or disadvantage, however denominated, that—

(i) is imposed by law as a result of the conviction of an individual for a felony, misdemeanor, or other offense; and

(ii) is not imposed as part of the judgment of the court;

(B) does not include a term of imprisonment, probation, parole, supervised release, fine, assessment, forfeiture, restitution, or the costs of prosecution;

(2) the term "disqualification" means a penalty, disability, or disadvantage, however denominated, that an administrative agency, official, or a court in a civil proceeding may impose on an individual convicted of a felony, misdemeanor, or other offense on grounds related to the conviction; and

(3) the term "collateral consequence" means a collateral sanction or a disqualification.

If confirmed as Director of the National Institute of Justice, how would you proceed to conduct the study of collateral consequences for criminal convictions?

The issue of collateral consequences for convicted felons is one that has received increased attention over the past few years. With estimates of as many as half a million prisoners being released to our communities annually, a study of this kind could add value to our understanding of re-offending and re-incarceration that may result when prisoners are unable to readapt to the outside world.

Recognizing the importance of prisoner reentry issues, NIJ is conducting research in this area, particularly through the Serious and Violent Offender Re-entry Initiative (SVORI). In 2003, the U.S. Departments of Justice, Labor, Education, Housing and Urban Development, and Health and Human Services established SVORI to fund over $100 million in 69 State grants addressing local re-entry program gaps. Through assessment, case management, and other strategies for enhancing in-prison and post-release strategies, SVORI programs are intended to reduce recidivism, as well as to improve employment, housing, and health outcomes, also referred to as "collateral consequences" of criminal conviction.

With funding from Congress, NIJ developed a $10 million multi-phase evaluation of the 69 program grants, the "Multi-site Evaluation of the Serious and Violent Offender Re-entry Initiative." Preliminary findings provide an overview of the services offered by SVORI programs and identify important strengths and weaknesses.

In recent years, NIJ has funded a number of other studies pertaining to specialized aspects of offender re-entry. Other organizations also have examined various aspects of collateral consequences, including the Sentencing Project, the American Bar Association, Harvard University, and the National Conference of Commissioners of Uniform State Law. Criminal justice practitioners and policymakers need reliable information on re-entry issues; a majority of State Legislatures have either revised or re-examined their

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laws relating to collateral consequences.

To meet these needs, build on our current research efforts, and keep with the Act's directive to, "determine and compile the collateral consequences to convictions for criminal offenses in the United States, each of the 50 states, each Territory of the United States, and the District of Columbia," NIJ would commission a broad survey of U.S. laws governing the collateral consequences of criminal convictions.

We would look forward to discussing this research initiative with Congress and the Administration.

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Senate Judiciary Committee
Hearing on "Executive Nominations"
Tuesday, December 18, 2007

Questions Submitted by U.S. Senator Russell D. Feingold
to David Hagy, Nominee to be Director of the National Institute of Justice

1. I have heard from law enforcement officials across my state that the federal government is simply not doing enough to help them. As a result, I introduced the PRECAUTION Act, S. 1521, with Senator Specter earlier this year. It contains two inter-related elements: (1) an independent commission that would hold hearings and publish a report on proven crime intervention and prevention programming; and (2) a grant program, administered by the National Institute of Justice (NIJ) in conjunction with the commission, to fund pilot programs to further develop the body of knowledge about what strategies are most effective in reducing crime. My bill would help to identify and employ intervention and prevention strategies that research has shown are most effective in reducing crime in our communities, and thereby help law enforcement agencies spend their limited money to achieve maximum results.

Should the PRECAUTION Act become law, will you commit to providing the NIJ resources necessary to implement the commission and run the pilot programs?

Should the PRECAUTION Act be enacted, NIJ could implement the commission, contingent on funding availability. Using the commission's findings, NIJ would work with Congress, the Administration, as well as other constituencies to prioritize and conduct the pilot studies.

In recent years, much has been accomplished in the formulation of research models and methods to develop strategically valid and reliable approaches to social problems such as prevention of violent crime. NIJ has been on the forefront of this work with past efforts such as the Chicago Project on Human Development, an interdisciplinary study of how families, schools, and neighborhoods affect child and adolescent development. In particular, the Project examined the pathways to juvenile delinquency, adult crime, substance abuse, and violence. Another example is the Judicial Oversight Demonstration (JOD) Project. The JOD Project tests the idea that strong judicial oversight and a systematic criminal justice response to domestic violence can improve victim safety and service provision, as well as increase offender accountability.

NIJ is currently conducting evaluations of local Project Safe Neighborhoods programs and the Serious Violent Offender Reentry Initiative. Both of these initiatives develop, implement, and evaluate pilot programs of innovative law enforcement and community corrections strategies to reduce violent crime in American communities.

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2. In recent years, the Administration's budget proposals have consistently provided extraordinarily low funding levels for essential federal grant programs for state and local law enforcement agencies. And I am concerned that not enough crime funding has been directed toward research initiatives that would also help state and local officials. In light of this and knowing that NIJ's funding was recently cut again when Congress passed the fiscal year 2008 omnibus appropriations bill, a fair amount of creativity will be necessary to use existing NIJ resources effectively and efficiently as possible.

Given these significant road blocks, are you committed to fighting within the Administration to secure adequate funding for NIJ going forward?

I am extremely committed to securing adequate funding for NIJ. Since being named Acting Principal Deputy Director of NIJ, I have worked diligently to secure OJP resources for NIJ's mission, including funding for the Attorney General's Global Justice Information Sharing Initiative, the National Missing and Unidentified Persons System, cold case and missing persons training, and a three-year Executive Session on public safety that is being administered by Harvard University's Kennedy School of Government.

I strongly believe in the need to set aside research and evaluation dollars in appropriations for criminal justice programs. Current examples include: the OJP Bureau of Justice Assistance's "Justice Assistance" Grant Program that has a set-aside for technology development; the Serious and Violent Offender Reentry Initiative which includes funding for research; and the Violence Against Women Act which provides funding for research and evaluation on domestic violence, sexual assault, dating violence, and stalking.

3A. Do you believe the Federal government has a role in facilitating evidence-based research, including the use of randomized trials, into crime prevention and intervention strategies?

NIJ has historically promoted and continues to facilitate evidence-based research, including the use of randomized trials to develop valid and reliable violent crime prevention and intervention strategies.

Almost forty years ago, NIJ funded some of the first randomized trials in policing strategies and domestic violence intervention. Today, evidence-based concepts like "hot spots" policing and pro-arrest policies in domestic violence are common practice. NIJ provided funding to the University of Maryland to conduct the study that resulted in the published report, *Preventing Crime: What Works, What Doesn't, and What's Promising*. This was the first comprehensive study to compile evidence on a wide range of crime prevention programs and continues to influence the adoption of evidence-based policies and programs. NIJ will continue to fund efforts such as the Campbell Collaboration to produce and disseminate systematic reviews of evidence-based and effective policies, programs, and technologies related to crime control and prevention.

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Further, NIJ is currently funding over 100 evaluations (including 25 randomized experiments) in family and community settings, including general anti-violence and anti-gang strategies, in our continuing effort to bring evidenced-based programming to criminal justice.

NIJ also is funding three randomized evaluations of violence prevention programs in New York State, Chicago, and the Seattle area. The New York study will provide follow-up to a randomized statewide implementation of nurse visitation programs to prevent and reduce violent behavior. The Chicago SAFE Children experiment is assessing the effectiveness of parent support and tutoring in preventing and reducing aggressive behavior among kindergarten children. The Seattle study is evaluating the efficacy of cooperative teaching methods in preventing disruptive and aggressive behavior in elementary grades. NIJ is currently funding further evaluation of the Gang Resistance Education and Training Program (GREAT), which includes randomized trials.

As further evidence of our commitment to this approach, all of our Fiscal Year 2008 social science research solicitations include language to emphasize sophisticated research designs and assert that funding priority will be given to this type of research.

3B. How will you ensure that NIJ is helping to facilitate or conduct this type of sophisticated and often more expensive, research?

As mentioned above, NIJ has a long history of facilitating evidence-based research and evaluation. NIJ subscribes to a comprehensive research, development, and evaluation model that includes funding basic and descriptive research as well as more sophisticated evaluations, including longitudinal and randomized research designs. NIJ remains committed to implementing this type of research by funding proposals to develop and evaluate valid and reliable approaches to crime prevention and intervention.

For instance, funding for NIJ's current solicitation on Crime and Justice Research was increased this year ($ 4 million total) to enable us to respond to proposals for larger and more sophisticated research. NIJ also continues to partner with other agencies through inter-agency agreements and memoranda of understanding to facilitate more expensive research. We will continue to work with program offices within DOJ (e.g., the Bureau of Justice Assistance and the Office on Violence Against Women) to develop creative ways of conducting developmental and evaluation research on the prevention of violence.

4. NIJ is often faced with the difficult decision of whether to accept fewer, more expensive large-scale research proposals, or more, less expensive but smaller research proposals that in some contexts may yield less reliable results. Do you believe there is an advantage in one approach or the other? Please explain.

There are advantages to both types of research in a comprehensive research and evaluation program. The decision to fund one or the other is based on various factors including available resources, the nature and priority of the research question being

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addressed, consensus of peer review panels, and opportunities resulting from partnerships with other Departments and agencies.

Small proposals are often funded when the research question addresses a new or ill-defined problem or, when an innovative program idea has yet to be tested and evaluated for the first time. We are currently funding a relatively small randomized experiment to evaluate the development and implementation of strategies to prevent gender violence and harassment among school children in Cleveland. NIJ is also currently funding large projects to conduct the first evaluations on the use of electronic monitoring and GPS technologies in supervision of probationers and sex offenders in Florida and California.

As mentioned earlier, our current solicitation for Crime and Justice Research is funded at a much higher level than in the past to allow for consideration of large-scale research proposals. NIJ continues to work to better focus our smaller solicitations on questions immediately relevant to the criminal justice community.

5. In your view, should NIJ, as a research institution, have some level of independence from the Office of Justice Programs and, more generally, from the Department of Justice? What steps have you taken as Acting Director to achieve a level of independence for NIJ?

During my year at NIJ, we have enjoyed independence in determining and funding our research agenda. It is my philosophy that once NIJ has determined a research agenda based firmly on our constituent needs, it is our duty to widely disseminate the results of that research through the most effective means possible.

NIJ's research priorities are determined by the Administration, Congress, working groups consisting of criminal justice practitioners and researchers, earmarks, and budgetary considerations, among other factors. NIJ works to integrate these diverse interests into a coherent research and evaluation agenda that focuses on answering criminal justice policy questions and developing technology relevant to the criminal justice community.

NIJ uses a system of technology working groups in our Office of Science and Technology and processes in our Office of Research and Evaluation to ensure that the criminal justice community helps determine our research agenda. In addition, research proposals and final research products are peer reviewed by researchers and practitioners to ensure the validity and reliability of our work.

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U. S. Department of Justice

Community Relations Service

Office of the Director *Washington, D.C. 20530*

January 16, 2008

The Honorable Patrick Leahy
United States Senate
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

Please find enclosed my responses to Questions for the Record submitted by you and Senator Cardin. In addition, I thank you for holding my confirmation hearing and the time you devoted to my nomination to be Director of the Community Relations Service ("CRS") of the Department of Justice. Please thank Senator Cardin for chairing my hearing.

I look forward to the opportunity to continue serving the country and the Department of Justice as Director of CRS.

Sincerely,

Ondray T. Harris
Acting Director

Cc: The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary

WRITTEN RESPONSES TO QUESTIONS FROM SENATOR PATRICK LEAHY,
CHAIRMAN, SENATE JUDICIARY COMMITTEE,
FROM ONDRAY T. HARRIS,
NOMINEE TO BE DIRECTOR OF THE COMMUNITY RELATIONS SERVICE
DEPARTMENT OF JUSTICE

1. At your hearing before the Senate Judiciary Committee, you were asked questions about the actions you took in response to the school yard noose incident in Jena, Louisiana and its aftermath. Just last month – in response to the prosecution of six African American youth known as the Jena 6, the rash of nationwide incidents involving the hanging of nooses, and the decline in Federal hate crime prosecutions – 5,000 protestors marched around the Justice Department asking the government to take more action to combat hate crimes. During your hearing, you testified that you were "satisfied" with the Community Relations Service's (CRS) effectiveness in quelling racial tensions after the noose hanging incident in Jena.

    a. What specific plan do you have for addressing the disturbing rash of noose hangings that have occurred nationwide in the aftermath of Jena?

Response: CRS has assessed, and is continuing to assess, noose incidents that have occurred throughout the country. CRS management designated conciliators in each region to handle jurisdictional conflicts, with an ongoing focus placed upon recent noose incidents. The employees at CRS have been instructed that it is critical that every noose incident is identified and assessed thoroughly, and that such cases are promptly reported to CRS Headquarters for guidance and resource assistance that may be required to expedite an appropriate response. In each community where a noose is displayed, CRS works with civil rights leaders, law enforcement, government and school officials, and community leaders to develop a capacity in the community to handle such incidents.

Additionally, CRS has remained significantly involved in Jena, Louisiana, and, in conjunction with other agencies of the Department of Justice, continues to offer services. For instance, from December 5-7, 2007, CRS facilitated a Community Education Forum with participation from community leaders and multiple DOJ components, including Community Oriented Policing Services (COPS), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Bureau of Justice Assistance (BJA), U.S. Attorney for the Western District of Louisiana, DOJ's Civil Rights Division (involved in planning the forum), and the Louisiana Commission on Law Enforcement and Administration of Criminal Justice (LCLE). The program was hosted by local clergy and was attended by more than 100 people, including representatives from LaSalle Parish law enforcement, courts and school district officials and families, civil rights leaders, community and faith-based groups, and business leaders. The forum allowed an open discussion as to methods and programs for helping to resolve perceived and real racial tension that exists in Jena.

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Additionally, CRS was present in Jena on January 7, 2008, to facilitate a contingency planning meeting for a march and rally reportedly planned by an extremist organization for January 21, 2008. Presently, CRS is scheduled to be in Jena for two upcoming events: the foregoing march and rally by an extremist organization, and a SPIRIT school conflict resolution program, facilitated by CRS, to be held on March 19-20, 2008. Preparation for each of these events will occur in Jena on January 17, 2008.

b. Does your "satisfaction" with CRS's response to the noose hangings in Jena mean that you believe racial tensions have improved in all communities where your agency has been involved following a noose hanging? How does CRS measure whether racial tensions have improved or declined in communities?

Response: **Let me correct any misunderstanding that may have been created by my response. In using the word "satisfied," I was referring to the effectiveness of CRS services given during the September 20, 2007, march and rally in Jena, Louisiana, and not as to "quelling" the racial tensions in Jena. Alleviating the racial tension in Jena will take time, and CRS and the Department of Justice are dedicated to assisting the Jena Community during this difficult time. It is the goal of CRS to assist any community experiencing racial tensions. Our success depends upon the community's willingness to accept the Agency's services. Since the march and rally in Jena were peaceful events, absent any arrests or violence, it was evident that CRS successfully administered the Agency's services. CRS does not suggest that racial tensions have improved in all communities where nooses have been discovered. Notwithstanding, the Agency's goal is to assist the communities where nooses were hung with addressing all racial tension, and to assist in building the capacity for communities to independently and successfully address race relations in the future.**

c. How do you plan to restore the public's confidence in the ability of the Justice Department to quell racial tensions that arise in communities with well documented noose incidents or hate crimes?

Response: **In continuing to address racial tension stemming from noose discoveries around the country, CRS works diligently to assist those communities with alleviating racial tension. CRS retains public confidence by remaining an impartial entity that respects parties in dispute. Examples of services that CRS will continue to provide to communities, including Jena, experiencing racial tension include: SPIRIT (Student Problem Identification and Resolution of Issues Together – a conflict resolution program offered in schools that have experienced racial tension), LEMS (Law Enforcement Mediation Skills – a program that provides additional conflict resolution tools to law enforcement), community dialogues, community forums, technical assistance, and contingency planning and self-marshalling training for marches and rallies.**

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2. On September 26, 2007, I wrote a letter to then-Acting Attorney General Peter Keisler asking him to advise me and the Judiciary Committee on what the Justice Department's Community Relations Service was doing to help resolve the racial tensions in Jena, Louisiana and across the country. In response, the Community Relations Service sent me a list of its activities with response to noose incidents across the country. Yet, after reading CRS's response to my questions, I was troubled to learn that the agency did not involve itself in an incident at Georgetown College, where a black student of Nigerian descent was found hanging from a noose and dead in a white fraternity house on the Georgetown College campus in Kentucky. Can you explain why CRS did not get involved in this incident? Can you update me on whether CRS plans to take any actions to alleviate racial tensions in the Georgetown College, Kentucky case?

Response: **CRS is presently involved in the Georgetown College case. CRS' conflict resolution and conciliation services are being provided to the community in Georgetown, including technical assistance and contingency planning. CRS facilitated a dialogue on January 15, 2008, between Georgetown College officials, African American community members, and other community leaders. In assessing the case, CRS has met with school officials, government officials, law enforcement, civil rights leaders, and clergy.**

In compliance with CRS' statute, as set forth by Title X of the Civil Rights Act of 1964, CRS may become involved in a case after jurisdictional requirements are met. By statutory mandate, CRS is prohibited from offering its services automatically or instantaneously; rather, CRS will conduct an assessment to determine whether jurisdictional factors exist that would permit the Agency's involvement. Then CRS verifies that the parties are interested in using the Agency's services. If a community accepts CRS services, conciliators will offer its panoply of services to the community. This particular process continues with respect to the conflict in Georgetown, Kentucky.

3. In a not too distant time, during the Civil Rights Movement, the Federal government infiltrated mass protests and collected information on thousands of Americans. In the last few years, our Committee has read disturbing reports of the Federal government using massive databases, supposedly for the war on terror, to collect information on American citizens, including antiwar and civil rights protestors. I understand that CRS conducts information assessments for the purposes of gaining insight into historical issues or concerns of the community related to race, ethnicity, or national origin. Has CRS compiled any information on demonstrators in Jena, Louisiana or elsewhere collected information during its assessments and shared that information with Federal, State, or local law enforcement officials? If so, please explain in full detail what information was collected, put into databases and shared, on what dates the information was shared, to whom it was shared, and for what purpose was this information shared?

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Response: CRS does not compile information for sharing with other agencies or organizations. CRS routinely retrieves data for programmatic purposes from our case management reporting system for internal use only.

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WRITTEN RESPONSES TO QUESTIONS FROM SENATOR BENJAMIN L. CARDIN,
SENATE JUDICIARY COMMITTEE,
FROM ONDRAY T. HARRIS,
NOMINEE TO BE DIRECTOR OF THE COMMUNITY RELATIONS SERVICE
DEPARTMENT OF JUSTICE

In late September, our Judiciary Committee staff was briefed by you regarding the incidents in Jena, Louisiana. According to my staff, they were unable to get answers to some of the following questions and I hope you can help me today. It is my understanding from your testimony at your confirmation hearing that the regional director for Jena was not on the ground until June 12, 2007.

I understand prior to getting on the ground, your office did look into the community for possible tensions and did some background work, but in my view not being on the ground until almost a year later is unacceptable.

1. What specific actions were taken by CRS to prevent escalation in racial discord in Jena, Louisiana?

Response: **The Community Relations Service ("CRS" or "Agency") has offered a myriad of services to the residents of Jena, including: self-marshalling training (teaching people how to peacefully control a march and rally), technical assistance (helping the town of Jena to develop a multi-racial Community Relations Panel to address future conflicts), community education forums (where discussions on grants and other DOJ services took place), facilitating dialogues (with participation by community and business leaders, government officials, civil rights leaders, law enforcement, school officials, and clergy) and ongoing assessments in Jena to determine where CRS can continue to offer conciliation and peacemaking services.**

In addition, CRS is scheduled in March 2008 to put on its SPIRIT program at the high school in Jena. The SPIRIT (Student Problem Identification and Resolution of Issues Together) program is conflict resolution training for schools that have experienced racial tension. CRS has worked with all relevant parties in and around Jena, Louisiana, to ensure that discussions and activities proceed in a peaceful manner and contribute to the restoration of community stability.

When CRS first learned of the tensions in Jena, Louisiana, the Agency initiated standard operating procedures for assessing community conflicts associated with race, color, and national origin. Preliminary assessment efforts were taken to determine whether CRS' statutory mandate allowed the Agency to assist the Jena community in resolving racial tension. This jurisdictional inquiry is the same for every case alerted by CRS. A conflict is jurisdictional if community tension exists due to real or perceived discrimination based on race, color, or national origin. If a matter is deemed jurisdictional, then CRS verifies that the parties are interested in using the Agency's services. Additionally, if the matter is jurisdictional and the

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parties are interested in working with CRS, then we determine whether the Agency's services are appropriate for resolution of a particular conflict. Only when each of these elements is answered in the affirmative, can CRS begin to work with a community toward conflict resolution. CRS affirmatively answered each of the aforementioned questions in assessing tension in Jena.

2. The nooses were hung at the school in Jena in August 2006, and your regional director learned of this action in September 2006. At your confirmation hearing you testified that CRS staff did not meet with civil rights leaders in Louisiana until November 2006.

   Why did it take two months to set up a meeting with civil rights leaders after the nooses were hung in Jena?

Response: At the time of the noose incident in Jena, the town of Jena did not have a civil rights infrastructure. There were no identified civil rights leaders (from organizations such as the NAACP, for example) to work with in determining the extent or level of tensions in Jena. Consequently, CRS worked with state officials to gain a perspective of tensions in Jena. Once CRS gained necessary information regarding the tensions in Jena, the Agency met with local leaders to further understand matters.

Because it is a component of the Federal government, some communities are skeptical of CRS' involvement in community disputes. There was an aspect of resistance with regard to CRS initiation of services in Jena. In fact, prior to the June 2007 date, when the regional director of Region 6 initially traveled to Jena, she was advised by a Louisiana civil rights leader not to interact with the people in the town alone. Therefore, the regional director only drove around the town to the pertinent locations. To address community tensions in Jena, a level of trust had to develop between the CRS Regional Director performing the assessment and various parties in Jena. This is a process that does not occur instantaneously. It takes time to build relationships within communities that can lead to open lines of communication. CRS was successful in developing these channels and has continued to offer services in Jena and elsewhere in the country where incidents involving nooses have occurred.

   It is also my understanding that you expressed concerns about the lack of infrastructure, mediators and CRS staff in Jena, when trying to handle certain racial problems or other hate crimes. Specifically, I understand that there are only two individuals that cover the entire region in which Jena is located. {Region 6 covers Texas, New Mexico, Louisiana, Oklahoma and Arkansas}.

3. Knowing that the town is not set up to handle a situation like JENA 6, why would the regional director wait almost a year to go to the site?

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Response: **The perception that CRS did nothing for one year in Jena is not correct. While CRS was not physically on-site in the town of Jena in September 2006, the Agency was working diligently with parties throughout the state to assess racial tensions and determine whether CRS could assist in the matter. CRS' physical entry into Jena for purposes of offering conflict resolution services could have only occurred after preliminary contacts were made and relationships with community leaders in Jena had matured. When jurisdiction in Jena was confirmed, CRS worked to gain the confidence of all relevant parties and to explain the benefits of utilizing our free services. Timing for CRS entry is contingent on a number of factors, including developing a sense of trust within a community. This entry successfully occurred through the persistence and skill of CRS' regional director.**

a. Additionally, how can the American people truly believe that 2 individuals from DOJ CRS are capable of handling such a situation?

Response: **CRS uses its resources prudently, and its career employees perform an admirable and difficult job in addressing racial conflicts and tensions in this country. CRS must prioritize matters to work effectively, efficiently, and strategically in addressing conflicts. Wherever community tension levels are escalating or verging on violence, CRS shifts resources to address these priorities. While only two individuals were covering Region 6 at the time, when it was evident that tensions were increasing in Jena, CRS management made the decision to increase efforts and to deploy a team of conciliators from throughout the country to assist with the civil rights march and rally in September 2007. Over forty percent of Full Time Equivalent (FTE) employees in the Agency worked on events stemming from Jena.**

b. If confirmed, what would you do to restructure the division to make it more productive and responsive to problems across our nation?

Response: **If confirmed, I will continue to stress efficient use of our resources, and work to constantly improve the effectiveness of CRS services. CRS is structured in a way that allows for the most efficient deployment of conciliators to handle conflicts throughout the country. As a conflict resolution organization, CRS deploys to areas in the country that are experiencing racial tension. For conciliators to assess situations – in a timely fashion – that arise throughout the United States, the current structure of the Agency with regional and field offices permits broad coverage.**

The JENA 6 case has drawn the most attention to hate crimes in America today. However, Jena 6 is not the only hate crime incident occurring in America. These crimes are crimes against all humanity. According to the *New York Times*, this administration has brought fewer hate crimes cases compared to its predecessors.

Last week the United States Senate unanimously passed a resolution I introduced, S. Res. 396, which expresses the sense of the Senate that: the hanging of nooses is

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a reprehensible act, and under certain circumstances can be a criminal act; and that the hanging of nooses should be investigated and prosecuted by Federal, State, and local law enforcement, with the cooperation of all citizens and the private sector.

4. On November 25, 2007, the New York Times published an article, "The Geography of Hate" which also had a map reflecting all the noose hangings that have occurred post-Jena. I displayed this graphic to you during your confirmation hearing. According to the chart, there have been 9 noose hangings in New York and 5 noose hangings in Pennsylvania in the last year after the Jena incident.

    a. What role has CRS played in minimizing the increasing number of hate crimes across the country under your watch?

Response: CRS, in collaboration with various community and law enforcement entities, has developed a hate crimes program curriculum for use in our jurisdictional work around the country. This program has been delivered to multiple communities since its development. Education is one of the strongest components for minimizing the effects of hate in our country.

5. In my view the role of CRS is to be more pro-active in situations where racial tension is brewing, as opposed to being merely reactive and waiting for a hate crime to occur.

    a. Are you aware of the incidents and problems occurring in Southern Maryland? How has your office been involved in addressing those problems?

Response: CRS is aware of the racial tensions in Maryland. CRS works within our statutory mandate to address jurisdictional problems in every state and territory. This includes assisting local, city, and state officials, community and civil rights leaders, law enforcement officials, and school district personnel with developing solutions to racial conflicts in Maryland communities. In Maryland, CRS has facilitated numerous jurisdictional conflict interventions. CRS, as with any conflict, will work with all parties in Maryland engaged in a jurisdictional dispute or experiencing racial difficulty.

The Agency's expertise is in providing a process to willing parties to help facilitate resolution of community conflicts. Whether it is a noose incident or other action perceived as discriminating on the basis of race, color, or nation origin, CRS' goal is to examine each case impartially, considering the Agency's wide range of available services for preventing and reducing racial conflict. These services have been provided to Maryland communities when requested or when a need becomes evident to CRS conciliators. Furthermore, CRS has various training programs that it offers to communities. For instance, the Agency's Law Enforcement Mediation

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Skills (LEMS) program, conflict resolution training for law enforcement, was offered in January to the community of Hagerstown, Maryland.

6. According to the Southern Poverty Law Center, there are at least 10 active hate groups in Maryland.

    a. What steps or actions have your office use to combat possible hate crimes in Maryland?

Response: In Maryland, CRS has worked with any community that has desired our services to help address racial tensions. CRS has provided conciliation and mediation services in Maryland and throughout the country. In Maryland, one such service CRS has used is its Hate Crimes Program, a two-day program that provides state and local law enforcement officers with the skills and knowledge crucial to the identification, reporting, investigation, and prosecution of and education about hate crimes. CRS is not an enforcement or investigatory agency; we offer conciliation and mediation services to communities that have experienced hate-related incidents. In addition, measures such as community dialogues or education forums are useful for advancing understanding of different cultures and reducing tension in communities following hate-related incidents.

    b. Do you have a relationship with local groups in Maryland, like the NAACP?

Response: Yes.

    c. Are you in regular contact with the leaders of civil rights organizations in each state?

Response: Yes.

- Please give me examples of some of the organizations you are in contact with in Maryland.

Response: CRS has worked with various groups in Maryland, including local, city, state and federal government officials (*i.e.*, U.S. Attorneys' Offices, Mayors' Offices and Governors' Offices), Maryland and national civil rights leaders and groups, law enforcement officials (*i.e.*, State Police, Sheriffs' Offices, etc.), and school administrators and principals.

Coordination between CRS and the Civil Rights Division is critically important in order for CRS to have a successful mission.

7. What has CRS done in the past, and what will you do in the future, to more aggressively monitor and assess the need for intervention?

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Response: **While the Agencies have different missions and statutory mandates, CRS and the Civil Rights Division share a good working relationship. CRS will continue to "aggressively monitor" jurisdictional conflicts in America associated with race, color, and national origin, and promptly enter communities as prescribed by the Agency's formative statute.**

I have heard that some civil rights groups in Louisiana were concerned about the meetings held after the Jena-6 incident, and whether their input given to CRS would remain confidential so as to protect their identities.

a. Did CRS staff make clear that the meetings were confidential?

Response: **CRS performs conciliation work in confidence. We initially introduce the Agency to all parties so that everyone understands CRS' confidentiality mandate. For example, we advise the parties that we are not an enforcement agency, that working with CRS is voluntary, and that our mandate requires the Agency to refrain from sharing information about our conciliation work. At times, other agencies have concurrent jurisdiction over certain conflicts, including the FBI for purposes of investigation. Nevertheless, CRS does not participate in law enforcement investigations.**

We have received reports that FBI agents may have attended some of these meetings, which may have alienated and intimidated some members of the community.

b. Did FBI agents attend these meetings? If so, why?

Response: **CRS facilitated a public, open-invitation, Community Education Forum in Jena, Louisiana, on July 26, 2007. This forum was organized to allow the Jena community to ask questions of various federal entities, including the FBI, about actions being taken to address the conflict in Jena. Community education forums allow communities to discuss problems and possible solutions to ongoing racial conflict. For this particular forum, civil rights and community leaders in Jena had inquired about specific actions being taken by the federal government for improving the situation in Jena. At the behest of those leaders, CRS facilitated the Community Education Forum to answer questions from members of the Jena community. The FBI was only present at CRS meetings in Jena where CRS was acting in its conciliator role. Furthermore, all meetings where CRS conciliation services are being offered, and where the FBI or other law enforcement entity is present, are purely voluntary and confidential. The voluntary nature of CRS' services, particularly with regard to mediation, enhances the Agency's impartiality and effectiveness as a conflict resolution specialist.**

8. What do you see as the appropriate relationship between CRS and federal law enforcement, such as the FBI?

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Response: The appropriate relationship between CRS and any party is one of neutral conciliator who respects parties in dispute. CRS is not a law enforcement agency. The Agency's involvement with a conflict is to help facilitate resolutions deemed appropriate by the community. Facilitating dialogue, a skill of CRS conciliators, is a primary method toward developing an open and honest line of communication between communities and governmental entities.

9. How will you transform CRS to be more community friendly and more welcome by local community and civil rights groups?

Response: CRS will continue to stress its impartiality and confidentiality. CRS only works with parties who agree to use our services when appropriate. Rendering effective service will best advertise to communities and civil rights groups that CRS is dedicated to assisting them. If confirmed, I will continue to stress at CRS that our goal is to always serve communities in the most effective and sensitive way possible.

In the Voting Section of the Civil Rights Division, several decisions appear to have been made in which political considerations trumped the Division's obligation to enforce the Voting Rights Act. Perhaps the most infamous of these examples occurred in 2005, when the Administration precleared Georgia's government-issued photo identification law despite numerous comment letters outlining the impact that the law would have on minority voters and over the recommendation of an objection from the majority of the staff who worked on it. Recent testimony and communications from career staff involved in this case make clear that the decision to preclear the Georgia voter ID bill was predetermined and political. The law was later found unconstitutional by state and federal courts, one of whom likened it to a Jim Crow era poll tax.

10. After the reauthorization last year of the Voting Rights Act of 1965 for another 25 years, do you agree that the Justice Department must remain vigilant to examine, deter, and oppose discriminatory voting practices and procedures that covered States seek to impose? What steps will you take in this upcoming election to make sure voter intimidation does not occur?

Response: CRS is prepared during each election season to address community conflicts that stem from allegations of discriminatory practices. In addition, the Agency plans to meet with the Civil Rights Division in preparation for the election season. Nonetheless, CRS' mandate as established by Title X of the 1964 Civil Rights Act and subsequent appropriations language makes clear that CRS works with communities only on existing conflicts.

11. Please explain in detail the role that your office plays in providing assistance to the Civil Rights Division during the Section 5 pre-clearance process.

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Response: **None. Having said that, however, CRS stands ready to assist communities in addressing tension arising from actual or perceived limitations on voter participation.**

It is my understanding that CRS is to help the Civil Rights Division in contacting minority community groups when state and local officials impose undue burdens on minority voter participation.

12. What actions have you taken in this regard under your tenure as Acting Director?

Response: **CRS is an impartial agency. It is contrary to CRS' mandate to make any judgment as to the propriety of state and local governmental decisions. Notwithstanding, CRS stands ready to assist communities in addressing tension arising from actual or perceived limitations on voter participation. In addition, CRS will work with DOJ's Civil Rights Division and any appropriate governmental agency in addressing such tension in the community.**

It is my understanding that you were employed in the Civil Rights Division during the same period that Mr. Schlozman and Mr. Van Spakovsky were working there.

13. Were you involved in any hiring decisions or interviews within the Civil Rights Division? If so, please detail which individuals and offices were involved.

Response: **While a Deputy Chief of Employment Litigation in Civil Rights, I did participate in the interviewing of career attorneys. Notwithstanding, I was not involved in the hiring decision. Along with another Deputy Chief of the Civil Rights Division, I was responsible for interviewing and selecting the non-paid summer interns for the section from years 2005 to 2007.**

14. Have you been interviewed by the Inspector General who is currently investigating the hiring, firing, and case reassignment complaints within the division? If so, when?

Response: **It is public knowledge that the Office of Professional Responsibility and the Office of the Inspector General are investigating the hiring practices in the Civil Rights Division. I was interviewed telephonically on December 6, 2007.**

15. What role should politics play in the hiring, firing, and case assignment of your employees?

Response: **Politics should play no role in the hiring, in the termination of employment, and/or in the terms and conditions of employment for career employees at CRS.**

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SUBMISSIONS FOR THE RECORD

TESTIMONY OF SCOTT BURNS, NOMINEE TO BE DEPUTY DIRECTOR FOR OFFICE OF NATIONAL DRUG CONTROL POLICY, BEFORE THE COMMITTEE ON THE JUDICIARY OF THE UNITED STATES SENATE

December 18, 2007

Chairman Leahy, Ranking Member Specter, Senator Cardin and distinguished members of the Committee:

I am honored to appear before you today as you consider my nomination for Deputy Director of the Office of National Drug Control Policy. First and foremost, I want to express my sincere appreciation to each member of the Committee that has offered advice, encouragement and counsel during the nomination process.

Overall, I believe that the Administration has pursued a sensible and effective anti-drug policy, consisting of three distinct prongs: 1) preventing drug use before it starts; 2) intervening in the lives of those in the grips of addiction and getting them necessary treatment and recovery services; and 3) working with domestic and international law enforcement to disrupt the production and distribution chains for illegal narcotics. This approach is yielding real, positive results, ensuring a better, safer future for countless Americans.

Prior to my 2002 confirmation as Deputy Director for State, Local and Tribal Affairs at the Office of National Drug Control Policy, I was a prosecutor in a small town for over fifteen (15) years and had observed first hand the devastating effects of illicit drug use in this country. I was honored to be able to bring that "frontline" experience to the table in advising and supporting those at ONDCP and the nation's Drug Czar.

Since coming to Washington, D.C., I have had the honor to work at the Federal level on the various programs and policies which supplement and buttress the work being done at the State and local level. For instance, I have had the opportunity to oversee the High Intensity Drug Trafficking Area (HIDTA) program which supports cooperation and coordination between Federal, State and local law enforcement to combat drug trafficking and distribution where the problem is most acute.

I have also had the honor of working to identify and resolve a variety of emerging domestic drug threats. From methamphetamine to prescription drug abuse, I have had the opportunity to bring together good people from all over the country to address burgeoning public health and safety issues.

While overseeing the drafting and approval of the Synthetic Drug Control Strategy in March of 2006, we outlined the scope of the problem and set forth forty-six (46) specific recommendations (or action items) to be completed by all sectors of the community, including prevention, education, treatment, and law enforcement.

My office has been at the forefront of addressing numerous other drug problems, such as the rash of deaths last year from fentanyl, wide-spread cultivation of marijuana on our nation's public lands, and growing abuse of prescription medications by Americans, young and old.

And, as the Deputy Director of State, Local, and Tribal Affairs, I have made it a priority to address the needs of Native Americans -- a population disproportionately impacted by substance abuse. I have directed a combined $1,000,000 dollars of HIDTA supplemental funding to be used over the past two fiscal years to detect, deter, interdict, disrupt, and dismantle drug trafficking organizations within Indian Country. On August 1, 2007, I oversaw the first annual Native American Methamphetamine Conference in Phoenix, Arizona, and in the past year, we have increased Tribal representation within Drug Free Communities (DFC) from 2.5% to 7.3% of all DFCs.

We have increased Access to Recovery (ATR) spending to Native Americans. In 2007, ATR grants totaling $47.1 million (over three years) were awarded to five tribal organizations covering Indian Country Populations in Alaska, California, Idaho, Michigan, Montana, Oklahoma, Oregon, Washington, and Wyoming. At my request, the National Drug Intelligence Center is preparing a Native American Drug Threat Assessment which is slated to be published in April of 2008.

Further, ONDCP's National Youth Anti-Drug Media Campaign (Media Campaign) is partnering with the U.S. Department of Interior, U.S. Department of Health and Human Services, the Partnership for a Drug-Free America, and the National Congress of American Indians to develop a new public awareness campaign aimed at targeting methamphetamine use among Native Americans. Combined, the partners have contributed $300,000 in support of this groundbreaking effort for Indian Country. ONDCP is providing half of the funding with a commitment of $150,000. Before this partnership, there was no national anti-meth media campaign tailored to Indian Country.

And the good work ONDCP does is not limited to domestic drug issues, but spans the globe, as well. I have had the honor to serve as the U.S. representative to the World Anti-Doping Agency (WADA) for the past four (4) years, working closely with the good people that oversee and operate the United States Anti-Doping Agency (USADA) as well some one-hundred and sixty (160) Sports Ministers from around the world. From my time in this position, I submit to you that that there has been a sea change in how our country now views and deals with doping in sport.

Fortunately, Mr. Chairman, I come before you at an historic time for our national drug control efforts. Due to the hard work of a variety of groups and institutions, both at home and abroad, there is a cocaine shortage in America. 37 major US metropolitan areas are reporting a sharp increase in the wholesale price of cocaine, and concurrent reductions in the purity of street-level

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cocaine sales. In short, pressure is being put on cocaine supply, thanks to efforts in Colombia, Mexico, at the Southwest border, and throughout the U.S.

Moreover, the latest data shows real, significant progress in our national effort to keep young Americans, in particular, safe from the ravages of illegal drug use. Since 2001, the Monitoring The Future (MTF) survey from the University of Michigan shows overall teen drug use down 24%, teen marijuana use down 25%, and nearly every other category of abuse by young people (i.e. ecstasy, LSD, amphetamines, inhalants, methamphetamine, steroids, cocaine, alcohol and cigarettes) down, as well. These statistics prove unequivocally that when we push back, provide a strong message, and fund and support those programs and efforts that work, we can make a difference.

There has been significant progress on all fronts in our nation's battle against methamphetamine, but also faces more challenges ahead. Domestic labs are down sharply, youth meth use is down, meth prices are up and purity is down (price per pure gram of methamphetamine increased 73%, purity dropped 31 percent).

Stricter retail controls of meth precursors on State and Federal level (CMEA) has driven meth lab numbers down from 10,000 in 2004 to 6,500 in 2006 and 2,336 in 2007 (as of Nov). The domestic restrictions on PSE have led to a migration of superlabs south of the border. Mexico has taken aggressive action and announced plans to stop all importation of pseudoephedrine in 2008. During 2008, Mexican companies will deplete their stockpiles of pseudoephedrine and Mexico will be licit pseudoephedrine free by 2009. However, there are new challenges we must deal with. Central America, Africa, and the Middle East have become major precursor trafficking centers. Further, I am worried about the large meth labs that have been detected in Canada and their ties to Asian organized criminal groups that can supply the precursor chemicals. We can't let up - the traffickers surely won't. We must continue to work all aspects of the meth problem, both at home and abroad, to ensure that this terrible drug does not threaten another generation of our citizens.

There are, undoubtedly, challenges ahead. As you are aware, the one category of abuse that is increasing, and frankly increasing at an unacceptable rate, is prescription drug abuse. As part of the Administration's National Strategy, and by working with our partners across the country, we are concentrating our efforts to reverse this trend through education and prevention programs, working to put Prescription Drug Monitoring Programs in all 50 states, having discussions with physicians across the country re solutions, working with DEA, FDA, Congress and others to give law enforcement better tools to go after those who use the internet to distribute prescription drugs in an unsafe and illegal manner, and we are working with state, local and tribal law enforcement agencies and prosecutors to better understand the problem and meet the challenges ahead.

Mr. Chairman, I have seen first hand the great strides that you and the members of this Committee have made over the years in reducing the demand for, and supply of, illegal drugs—and as stated earlier, I am well aware of the thousands of women and men that go to work every day to prevent addiction and drug abuse and change and save lives.

I humbly submit that those involved in this effort would tell you that I have worked hard to make certain that all voices were heard and that a strong plan to attack these problems emerged.

If I am fortunate enough to be confirmed, I pledge to dedicate myself to working hard the final year of this administration and, with your support and many others, I am confident that we can continue to see success and at the same time recognize our shortcomings and address them as well.

Thank you for this opportunity to testify, and I look forward to answering any questions the Committee may have.

OPENING STATEMENT FOR

SENATOR BENJAMIN L .CARDIN

CONFIRMATION HEARING

SENATE JUDICIARY COMMITTEE

DECEMBER 18, 2007

The Committee will come to order. I thank Chairman Leahy for asking me to chair today's hearing.

Today, the Committee holds a confirmation hearing on four Department of Justice nominees and one nominee for the Executive Office of the President.

Ondray Harris to be Director of Community Relations Service;
David Hagy, to be Director of the National Institute of Justice;
Scott Burns, to be Deputy Director of National Drug Control Policy;
Cynthia Dyer, to be Director of the Violence Against Women Office; and
Nathan Hochman, to be Assistant Attorney General for the Tax Division at DOJ.

I am pleased that the Committee is holding this hearing in order to review the nominees for these important positions at the Department of Justice. It is very important that we restore leadership, professionalism and independence to all areas in the Department of Justice.

Each of these agencies and offices we are reviewing today holds an important role in American society.

The Community Relations Service division is the Department of Justice's "peacemaker" for community conflicts and tensions arising from differences of race, color, and national origin. Created by the Civil Rights Act of 1964, CRS is the only Federal agency dedicated to assist State and local units of government, private and public organizations, and community groups with preventing and resolving racial and ethnic tensions, incidents, and civil disorders, and in restoring racial stability and harmony. Today, however, it is with great sadness that our country has seen a rash of incidents involving the hanging of nooses in this country. These incidents are a painful reminder of just how far we have to go. I have been disappointed with the Department of Justice's recent lack of attention to what has become an epidemic of hate crimes and intimidation occurring nationwide from Jena, Louisiana to College Park, Maryland.

The National Institute of Justice is charged with researching crime control and justice issues. NIJ provides objective, independent, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the State and local levels. One

challenge the NIJ will have to address is the recent rise in gangs and gang activity in the United States.

The Violence Against Women Office is charged with reducing violence against women, and to administer justice for and strengthen services to all victims of domestic violence, dating violence, sexual assault, and stalking.

The National Drug Control Policy in the Executive Office of the President establishes policies, priorities, and objectives for the Nation's drug control program. The goals of the program are to reduce illicit drug use, manufacturing, and trafficking, drug-related crime and violence, and drug-related health consequences. We have serious problems with drug abuse in America, and just last week we learned of more examples of drug abuse by our role models in professional baseball. Over the past year the Committee has passed legislation to regulate online pharmacies, and has held a hearing on the use of electronic prescriptions of controlled substances by doctors.

Lastly, the Tax Division of the Department of Justice is responsible for representing the United States and its officers in most civil and criminal litigation that concerns or relates to the internal revenue laws. The Division works closely with the Treasury Department and the Internal Revenue Service. This is one of the few agencies of government that provides a greater return on its investment. Its pursuit of tax fraud and tax evasion cases results in a greater return of funds to the Treasury than in its expenditures.

I thank all the witnesses for coming today, and I look forward to hearing your answers to the Committee's questions. Any written statements of witnesses will be made part of the Committee record.

Statement of Senator Norm Coleman

Nomination of Nathan Hochman

It is truly an honor to be here today introducing my friend, Nathan Hochman. One of the most important responsibilities of the U.S. Senate is clearly laid out in Article II of the Constitution. It says our job as U.S. Senators is to offer "advice and consent" over all nominations, and in doing so I believe it is our responsibility to find the best possible public-servant to do the job. Today, I am hopeful that we will fulfill that important duty by approving the nomination of Nathan Hochman to be the next Assistant Attorney General for the Tax Division. Nathan has had an exemplary career from his education at Brown University and Stanford Law all the way to his current position as Principal at Hochman, Salkin, Rettig, Toscher and Perez, P.C. in Beverly Hills, CA.

He has also already demonstrated a tireless commitment to public service. He has vigorously pursued opportunities to serve his country through the federal judicial system and has then gone above and beyond the call of duty to be awarded and honored for his contributions and skill. His awards include the Inspector General's Award of Excellence, USDOJ's Award for Superior Performance as an Assistant, and the Federal Law Enforcement Officer's Association Prosecutorial Award.

Moreover, not only does Nathan have an excellent overall background in both prosecution and defense of the law, but his expertise in tax law would be a tremendous asset to the Department. He is the author of several publications on the topic which appeared in leading journals such as the Journal of Tax Practice and Procedure and Los Angeles Lawyer.
And as Assistant U.S. Attorney in the Central District of California, he was involved in over 20 federal district court trials, many dealing with financial and tax-related crimes.

Finally, and most notably, Nathan's leadership skills are beyond reproach and have been demonstrated in several capacities. He confidently and adeptly ran the L.A. Disaster Fraud Task Force and the Environmental Crimes Task Force. He has also taken on leadership roles in numerous non-profit organizations, dedicating his time and energy to the community at large.

I strongly believe Nathan Hochman would serve our country as Assistant Attorney General for the Tax Division with the same integrity, expertise and outstanding commitment as he has exhibited over the course of his lifetime, and he has my highest recommendation and respect.

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Statement of Chairman Patrick Leahy,
Senate Judiciary Committee,
Hearing on Executive Branch Nominations
December 18, 2007

With only a few legislative days remaining before the December recess, the Committee today holds a hearing on five nominations for high-ranking Executive Branch positions. This hearing is the first of two confirmation hearings that will be held by our Committee this week as we try to make progress filling vacant positions in the Executive Branch.

Today, we continue the long process of rebuilding the integrity and independence of the Justice Department by hearing from four nominees nominated to fill senior posts at the Justice Department. One of these is Ondray T. Harris, nominated to be Director of the Community Relations Service.

I thank Senator Cardin for his willingness to chair this important hearing today. I know that he agrees with me that recent events in Louisiana serve as a troubling reminder of the continuing need for the Community Relations Service to act as a "peacemaker" in responding to community tensions about race. Fittingly, Senator Cardin introduced a resolution reported out unanimously by this Committee last week responding to the disturbing rash of incidents involving the hanging of nooses in this country. The proliferation of these symbols of hate continues to stain the fabric of our democraey and painfully remind us that living up to our most cherished ideals is still a work in progress.

The Community Relations Service at the Justice Department is the Federal agency charged with preventing and resolving racial and ethnic tensions. This "peacemaker" agency responded to the community tensions surrounding the hanging of a noose from a school yard tree in Jena, Louisiana, as well as the chilling events that Americans have recently witnessed with noose hangings all over our country. I sent a letter in September to former Acting Attorney General Peter Keisler asking what actions were taken, and will be taken, by the Justice Department's Community Relations Service to address the disturbing noose events in Jena and around the country. Yet, we have had difficulty getting straight answers on this issue.

Under this Administration, we have moved backward, rather than forward, on enforcing our crucial civil rights laws. I am hopeful that with new leadership this President and the Justice Department can improve on its abysmal record of enforcing civil rights laws on behalf of African Americans and Hispanics.

Today, we also have before us other important nominations to help rebuild the Justice Department -- David W. Hagy to be Director of the National Institute of Justice, Cynthia Dyer to be Director of the Violence Against Women Office, and Nathan J. Hochman to be an Assistant Attorney General of the Tax Division.

We will also hear from one nominee for a high-level position in the Executive Office of the President – Scott M. Burns to be Deputy Director of the Office of National Drug

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Control Policy. We consider his nomination on the heels of decisions by the Supreme Court and the U.S. Sentencing Commission that represent moderate but powerful steps to reform the unfair disparity that exists in Federal crack cocaine sentencing laws.

Yet, the Administration continues to be silent on any reform in this area. For more than 20 years, we have tolerated a Federal cocaine sentencing policy that treats crack offenders more harshly than cocaine offenders. This policy has unacceptably had a disparate impact on people of color and the poor – without any empirical justification. The Administration's failure to support even the slightest modification of crack penalties is both a surprise and a deep disappointment.

This is a welcomed hearing. For months I have been discussing the need to fill the remaining vacancies with nominees who will restore the independence of federal law enforcement. Under this President, the Department of Justice suffered a severe crisis of leadership that allowed our justice system to be corrupted by political influence. The Department's tradition of independence from political influence, the morale of career attorneys within the Department, and public confidence among the American people have all paid a heavy toll as a result of the politicization of the Department.

Last month, the White House announced with great fanfare its intent to make nominations for key positions at the Department of Justice. It was only weeks later that several of these nominations were sent to the Senate. Tomorrow, we will hear from Judge Mark Filip, the President's nominee to be Deputy Attorney General, the second highest position at the Justice Department. The delays in sending today's nominees and others to the Senate follow the many months of delay where the White House failed to send nominees to fill vacancies that have been open since the summer.

As always, we will continue to make progress when we can, and I will continue to urge the White House to send the Senate consensus, qualified nominees. I look forward to hearing from today's nominees, and I hope that, if confirmed, they will strengthen and restore the Department of Justice.

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2006-09-01

GOP Sees Israel as Way to Woo Democratic Jews

by Marc Ballon, Senior Writer

For two decades, Nathan Hochman voted exclusively Democratic: Mondale, Dukakis, Clinton, Clinton, Gore -- the 42-year-old former assistant U.S. attorney cast his ballots for them all. To Hochman the Republican Party represented a right-wing amalgam of pro-business, anti-abortion and pro-prayer-in-school interests.

Sept. 11 changed everything. National security and Israel moved to the top of Hochman's political priorities, and on both counts he felt the Democrats fell short. Hochman felt that the Republicans, by contrast, seemed to see that peace through strength is the only option in this new era. He was also drawn to the fact that the Bush administration has made Israel's security a "foremost concern" and consistently sent "the message to the world that Israel's survival is not a debatable question."

So two years ago, for the 2004 presidential election, Hochman did the once unthinkable: He switched parties and voted for Bush. Since then, he's been preaching to friends and family about what he considers the Republicans' big tent and the party's unshakeable commitment to Israel.

"I've opened up people's eyes to the possibilities of what the Republican Party can represent," he said. "At the very least, they're listening to me."

At a time when Israel faces a dual threat from Hezbollah and Hamas -- groups classified by the U.S. Department of State as terrorist organizations -- an increasing number of Jews have become more receptive to the Republican Party's message of blanket support for Israel and its foreign policy. Put off by what they characterize as a string of anti-Israel positions taken in recent years by Democratic Party grandees, they worry that the Democrat's often anti-Israel progressive wing will continue its ascendancy. And if it does so, many Jewish Democrats might think about quitting the party entirely. At the very least, they have become more amenable to voting for moderate Republicans, according to Joel Kotkin, Irvine Senior Fellow at the New America Foundation.

"It's going to be harder and harder to be on the left and be pro-Israel," Kotkin said. "I think many Jews are going to have to choose between their leftism and their Judaism."

At the same time, Democrats argue that they remain among Israel's staunchest supporters. Former Rep. Mel Levine, for example, is a stalwart Israel partisan: "Democratic support for Israel remains solid and strong," he insisted. Attempts by the Republicans to suggest otherwise, Levine and others argue, is nothing less than

a cynical ploy to peel away Jewish votes. Despite Republicans' best efforts, Democrats say, the overwhelming majority of Jews will continue to vote Democratic because of the party's steadfast support for Israel and its commitment to such core Jewish values as justice, equality and opportunity. Among the faithful is Daniel Sokatch, executive director of the Progressive Jewish Alliance.

"I keep hearing from the RJC [Republican Jewish Coalition], the Republican Party and commentators that this is the election when the Republicans are going to break Jewish ties to the Democratic Party," he said. "Well, I'm 38 years old, and it hasn't happened yet. And I don't think it's going to happen."

Recent opinion polls suggest, however, that Democratic support for Israel has slipped, a development that Republicans have wasted no time trying to capitalize on. In August, a study by the Pew Research Center for the People and the Press found that 68 percent of Republicans surveyed said they sympathize more with Israel than with the Palestinians, compared to just 45 percent of Democrats. Similarly, a Los Angeles Times/Bloomberg poll, conducted between July 28 and Aug. 1, found that Republicans favored alignment with the Jewish state over neutrality by 64 percent to 29 percent. By contrast, only 39 percent of Democrats supported alignment, while 54 percent favored neutrality.

"I am very worried that the Democratic Party's pro-Israel stance will continue to show cracks," said Paul Kujawsky, vice president of the local chapter of Democrats for Israel, "and that the most [Zionistic] committed Jews will continue to flow to the Republican Party."

Nobody is suggesting a massive defection to the Republican Party by Jewish Democrats. The historical, as well as philosophical, ties that bind Jews to the party of Truman, FDR and JFK run deep, which partly explains why an estimated three out of four Jewish voters are Democrats.

Still, the Republicans have made some inroads. Nationally, President Bush won at least 26 percent of the Jewish vote in 2004, up from 19 percent in 2000, according to the Los Angeles Times. A socially moderate Republican presidential nominee with a strong record on Israel, experts said, could pull in 40 percent to 45 percent of the Jewish vote in 2008 and sweep such key swing states as Florida, Ohio and Pennsylvania. Closer to home, the California Republican Jewish Coalition (RJC) has seen its membership more than triple, to 7,000 from just 2,000 in the past 2 1/2 years, RJC California Director Larry Greenfield said. On the issue of Israel, Republicans now appear to be scoring higher in the battle for the hearts and minds of the Jewish voter, mostly because of perceived Democratic missteps:

- In a recent interview with the German magazine Der Spiegel, former Democratic President Jimmy Carter said Israel launched an "unjustified attack on Lebanon" and that it lacked "any legal or moral justification for their massive bombing of the entire nation of Lebanon."
- At a time when Hezbollah rockets sent hundreds of thousands of Jews in northern Israel fleeing into bomb shelters, the local chapter of the Progressive Democrats of America voted to recommend that the United States cut off military aid to Israel.

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"We don't see how shipping cluster bombs to Israel, which is going to create generational hatred, is going to help peace in the Middle East," chapter President Marcy Winograd said, adding that her group also voted to condemn Syria and Iran for supplying arms to Hezbollah. Winograd received 37 percent of the vote in her June 6 Democratic primary race against Rep. Jane Harman (D-El Segundo).

- To most political commentators, Sen. Joe Lieberman (D-Conn.) lost his bid against peace candidate Ned Lamont in the Connecticut senatorial primary "because he came off as an uncritical supporter of Iraq policy, not because of his deep commitment to Israel," said Rep. Howard Berman (D-Van Nuys).

  Nevertheless, many Jews have lamented that an Orthodox Jew and strong Israel supporter succumbed to a political neophyte who received much of his backing from what they see as the far-left, anti-Israel blogger wing of the Democratic Party. That two controversial former Democratic presidential candidates, the Rev. Jesse Jackson and the Rev. Al Sharpton, flanked Lamont at his primary election celebration further discomfited many Jews. Jackson, in 1984, referred to New York City as "Hymietown"; Sharpton is alleged to have incited anti-Jewish violence in Crown Heights in the 1990s and to have referred to Chasidic Jews there as "diamond merchants."

- In 2003, Rep. James P. Moran Jr. (D-Va.) blamed the Jewish community for pushing the United States into Iraq. "If it were not for the strong support of the Jewish community for this war with Iraq, we would not be doing this," Moran reportedly told the Greater Reston Interfaith Peace Coalition, according to the Reston Connection newspaper.

"There's something terrible going on in the Democratic Party," said Matt Brooks, executive director of the Republican Jewish Coalition in Washington, D.C. Sensing an opportunity to make political hay, the RJC in early August launched an ad campaign in more than 20 Jewish newspapers across the country, including the Jewish Journal, portraying the Democrats as soft on defense and Israel.

Below a photo of a glum looking Sen. Lieberman, the text reads: "Right now, Israel needs all the friends it can get. Sadly, the Democratic Party just took away one of Israel's best friends."

David Goldenberg, deputy executive director of the National Jewish Democratic Council in Washington, D.C., believes that by running such spots, the Republicans are attempting to divide the Jewish community. He argued that the Republicans have no other issue that resonates with Jewish voters and, he said, have resorted to distorting the Democrat's positions.

"As a party, the Republicans are pro-Israel when it is expedient to be pro-Israel," Goldenberg said.

Yet there has been a long-term and genuinely heartfelt commitment to Israel among the Christian right, rebuts Daniel Pipes, director of the Middle East Forum. The single person who most reflects the Republicans' commitment is George W. Bush, he said.

But the president's Middle East policies have, in many ways, left Israel more vulnerable than ever, responded several high-ranking Democrats. Rep. Henry Waxman (D-Los Angeles) said the U.S. war in Iraq has diminished America's ability to respond to the "real threat" in the region -- Iran, a country alleged to have nuclear ambitions and which has called for the destruction of Israel. An emboldened Iran, Waxman said, now feels "more able to openly use Hezbollah" forces against Israel to fight its proxy war against the United States.

"I think most thoughtful Jewish supporters of Israel are going to realize that it would be better if [Bush] loved us a little bit less, but would do things on behalf of U.S. and Israelis interests that are competent and successful," Waxman said.

Political consultant Bill Carrick believes that in the final analysis, Democratic officialdom's strong support of Israel will keep Jews in the party, regardless of Republican predictions to the contrary.

Indeed, in late July, the U.S. House of Representatives passed on a bipartisan 410-8 vote, a resolution that supported Israel in its confrontation with Hezbollah.

Expressions of confidence notwithstanding, at least one Democrat operative, who requested anonymity, said the party has failed to inspire an acceptable level of support for Israel among its rank-and-file.

"We have to do a better job of explaining to our constituents why the Democratic Party is pro-Israel and why that's important," he said.

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CHUCK CANTERBURY
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JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

11 December 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Specter,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for the nomination of Scott M. Burns to be the next Deputy Director of the Office of National Drug Control Policy (ONDCP) at the White House.

Mr. Burns currently serves as the Deputy Director for State, Local and Tribal Affairs in the ONDCP and, in this role, serves as the principal advisor to Director John P. Walters regarding Federal, State and local law enforcement. He is responsible for the oversight of the High Intensity Drug Trafficking Area (HIDTA) program and plays a leadership role for numerous Administration initiatives such as reducing prescription drug abuse, enhancing drug courts, tackling marijuana and methamphetamine production on public lands, and crafting other national strategies to disrupt the market for drugs such as methamphetamine, marijuana, cocaine and heroin. Most recently, Mr. Burns was appointed by the White House to serve as the United States' representative to the World Anti-Doping Agency (WADA), an international organization charged with eliminating doping and drug use in sports. Mr. Burns represents the 40-nation Americas region on WADA's governing Foundation Board and also chairs WADA's Ethics and Education Committee, which aims to educate young athletes worldwide on the health and ethical dangers of drug use.

Mr. Burns also has a strong law enforcement background, which is important to the FOP, and will serve him well if confirmed as Deputy Director of the ONDCP. During his sixteen years as the County Attorney for Iron County in Utah, he successfully prosecuted more than 100 felony jury trials, including rape, child abuse, narcotics, and capital murder. He has seen first-hand the effects that drug use can have on a community. I am pleased to say that Mr. Burns has been a very effective advocate for the Administration and, more importantly, he has been responsive and very willing to bring local and State law enforcement organizations to the table–making them true partners when helping to develop policy. On each and every occasion that I or a member of my staff has interacted with Scott, we have been very pleased with the result.

The FOP believes that Scott M. Burns is an outstanding choice to be the next Deputy Director of the ONDCP and, on behalf of the more than 325,000 members of the Fraternal Order of Police, we are proud to support his nomination. If I can be of any further assistance on this matter, please do not hesitate to contact me or Executive Director Jim Pasco at my Washington office.

Sincerely,

Chuck Canterbury
National President

—BUILDING ON A PROUD TRADITION—

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Washington State Narcotics Investigators Assn

Wisconsin Narcotic Officers' Assn

December 17, 2007

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing on behalf of the forty-four state narcotic officer's associations and the more than 69,000 law enforcement officers represented by the National Narcotic Officers' Associations' Coalition (NNOAC) to offer our strong support for the appointment of Mr. Scott M. Burns to be Deputy Director of National Drug Control Policy, Executive Office of the President.

America's narcotic officers have come to reply upon the services, support and leadership of the Office of National Drug Control Policy (ONDCP) and having a well-qualified person leading in this office is important to the safety and well being of all Americans. We believe that Mr. Burns' lifelong commitment towards fighting crime and drug abuse makes him an ideal fit for this important position. By serving as Deputy Director for Office of State, Local, and Tribal Affairs within ONDCP, Mr. Burns has worked closely with federal, state and local law enforcement through his oversight over the High Intensity Drug Trafficking Area (HIDTA) program and has provided steady leadership on a range of issues, including prescription drug abuse, enhancing drug courts, and tackling marijuana and methamphetamine production across the country. Additionally, by serving for sixteen years as County Attorney in Iron City, Utah, Mr. Burns has worked on all sides of the drug problem in America; by prosecuting dozens of criminals who have committed serious crimes - many through the use or the distribution of illegal narcotics.

During Mr. Burns' tenure at ONDCP and as County Attorney, he has gained the confidence and respect of law enforcement officers and criminal justice professionals throughout the nation. Mr. Burns is a dedicated and well qualified professional and we can think of no one more qualified than him for appointment as Deputy Director of National Drug Control Policy, Executive Office of the President. Please feel free to contact me at rbrooks@nca.hidta.net or (415) 748-0835 if you require further information as you work through the selection process. Thank you again for taking time to review our position.

Sincerely,

Ronald E. Brooks
President

CC: Senate Committee on the Judiciary

JOHN WARNER
VIRGINIA

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SENATOR JOHN WARNER STATEMENT
TO THE SENATE JUDICIARY COMMITTEE
ON THE NOMINATION OF ONDRAY T. HARRIS
TO BE DIRECTOR OF THE COMMUNITY RELATIONS SERVICE

December 18, 2007

Chairman Leahy, Senator Specter, and my distinguished colleagues on the Judiciary Committee, I am pleased to introduce to the Committee Mr. Ondray T. Harris, who has been nominated to serve as the Director of the Community Relations Service at the Department of Justice.

As you know, the Community Relations Service helps local communities resolve serious racial and ethnic conflicts. CRS has worked extensively in response to church burnings, violence prevention in schools, and in response to civil unrest in various parts of the country.

Certainly, CRS has an important mission, and - in my view - Mr. Harris's experience seems to be tailored well to lead this agency. Throughout his career in public service and legal practice, Mr. Harris has developed exceptional experience with federal and state standards on civil rights. Since May 2007, he has served as the Acting Director of CRS, and I believe that he is deserving of Senate confirmation with respect to this position.

Prior to joining CRS, Mr. Harris was a Deputy Chief within the Department of Justice, with a responsibility of managing attorneys in the Employment Litigation Section. In this capacity, he also served as a liaison between the Department, the Equal Employment Opportunity Commission, and private minority organizations to strengthen the working relationships between these entities.

For five years, before entering the Administration, Mr. Harris worked on behalf of the Commonwealth of Virginia as an Assistant Attorney General. In addition to his duties in litigation and grievance hearings, he was assigned to act as the sole counsel for the Virginia Council on Human Rights, a state agency that protects against unlawful discrimination. Mr. Harris provided legal advice, assisted in interpreting the agency's statutory authority to form regulations and policies, and instructed personnel regarding appropriate procedures and the laws of civil rights.

Mr. Harris received his B.A. from Hampden-Sydney College and his law degree from Washington & Lee University. I am pleased to note that, in addition to his diligent work, he has provided volunteer service through the Richmond Women's Bar Mentorship Program.

I look forward to the Committee reporting Mr. Harris's nomination favorably and for a confirmation vote before the full Senate.

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Senator Jim Webb
Statement on Behalf of Ondray T. Harris
Nominee to be the Department of Justice's
Director of the Community Relations Service
December 18, 2007

Before the Committee on the Judiciary

Chairman Leahy, Ranking Member Specter, and my other distinguished colleagues on the Committee on the Judiciary, today I am pleased to introduce to you Ondray T. Harris, a Virginian who has been nominated to be Director of the Community Relations Service at the Department of Justice.

Mr. Harris has a distinguished employment history practicing law and with the Department of Justice. He currently serves as Acting Director of the Community Relations Service at the Department of Justice. Previously, Mr. Harris served as a Deputy Chief in the Employment Litigation Section of the Civil Rights Division at the Department of Justice. In fact, he returned to this position in 2005 after leaving the LeClair Ryan law firm in Richmond, Virginia, where he was a partner. Before his initial tour with the Justice Department in 2004, Mr. Harris served as an Assistant Attorney General for the Commonwealth of Virginia from 1999-2004 where his primary focus was labor and employment law. He has also worked as an associate at Krumbein and Associates in Richmond, Virginia.

Mr. Harris graduated with an A.A. in Liberal Arts from Ferrum College. He graduated with a B.A. in History from Hampden-Sydney College, and he earned his Juris Doctorate from Washington and Lee University. Mr. Harris is also a graduate of the Herbert Stern Trial Advocacy School at the University of Virginia. Moreover, he participated in the Richmond Women's Bar Mentorship Program, and has volunteered at an inner-city elementary school to educate students on the political process and law.

I respectfully ask that due consideration be afforded to Mr. Harris's nomination to be Director of the Community Relations Service at the Department of Justice. I thank the Committee.